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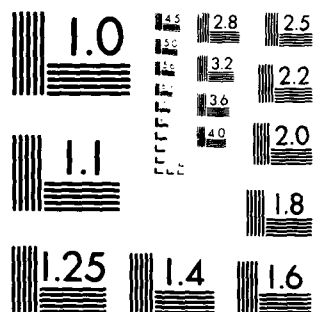
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THE ROLE OF THE CONTRACTING OFFICER
IN THE IMPLEMENTATION OF OMB CIRCULAR NO. A-76;
POLICIES FOR ACQUIRING COMMERICAL OR INDUSTRIAL
PRODUCTS AND SERVICES NEEDED BY THE GOVERNMENT.

by

William Gordon Fackenthall

March 1980

Thesis Advisor:

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The Role of the Contracting Officer
in the Implementation of OMB Circular No. A-76;
Policies for Acquiring Commercial or Industrial
Products and Services Needed by the Government

by

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Submitted in partial fulfillment of the
requirements for the degree of

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ABSTRACT

Office of Management and Budget Circular No. A-76 establishes policies relating to the reliance of the Federal Government on the private enterprise system to provide its needed goods and services. This research effort focuses on the role of the Navy Field Procurement System Contracting Officer in implementing the Circular's principles. This is accomplished by first reviewing policy development and implementation efforts; second, by establishing a framework from which to view the role of the Contracting Officer in the process; and last, by identifying problem areas he faces in carrying out policy directives. Department of Defense implementation via the Commercial Industrial Type Activities (CITA) program is presented. The acquisition and contracting aspects of the program are treated in some detail. Conclusions regarding the effectiveness of the acquisition process in support of program development are presented along with recommendations to assist in implementation efforts.

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I. INTRODUCTION

The policy of reliance on the private sector to satisfy Government needs for goods and services has a long history of congressional interest and executive support. The American people have a right to expect efficiency and economy in the performance of their Government. This may best be accomplished by reliance on the private enterprise system in many instances. However, they also expect the Government to maintain a strong national defense posture and accomplish for itself those functions for which only it has sole responsibility. Throughout the recent history of this country there has been considerable debate and controversy surrounding how the Government might best achieve these multiple objectives.

On 29 March, 1979 the Office of Management and Budget issued Revision No. 4 to its Circular No. A-76, entitled Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government. The revised Circular varies significantly from previous ones and represents another step by the Federal Government in an attempt to formulate a uniform national policy on these extremely sensitive issues. Should the Government satisfy its needs for goods and services internally through the use of civil service and military personnel, or should it rely more appropriately on the private sector through contractual arrangements? The Circular attempts to formulate a balanced approach in this regard by

recognizing that the Government should rely on the private sector to the maximum extent possible; however, at the same time recognizing that certain functions by their very nature must be performed by Government personnel, and lastly, that relative cost must be given appropriate consideration in all decisions between in-house and contract performance.

The Department of Defense (DOD) faces continually growing demands on its limited resources and has, somewhat belatedly, recognized the potential for more effective resource utilization by commencing active implementation and support of this policy guidance. As implementation progresses, it is most likely that DOD will be turning more and more to the private sector to satisfy its needs particularly in the areas of base support and service functions. This may pose some significant issues regarding acquisition philosophies and contracting methodologies for Government acquisition personnel. In particular, the Contracting Officer will face new and challenging issues that may tax his professional abilities.

A. OBJECTIVE OF RESEARCH

The objective of this research is to review the issues surrounding the implementation of OMB Circular No. A-76 in the Department of Defense and more specifically in the Navy. This research will address acquisition issues as they relate to the Government Contracting Officer. The focus of the research will examine the Circular and its relation to the

Government Commercial and Industrial Type Activities (CITA) Program. The goals of this effort are to develop a framework for reviewing the issues from the viewpoint of the Contracting Officer, identify potential problem areas within the framework, and provide guidelines for dealing with the problems.

B. RESEARCH QUESTIONS

What are the significant issues the Contracting Officer faces in the implementation of the current policy guidelines as expressed in OMB Circular No. A-76, and how might he effectively address these issues?

Subsidiary research questions include:

1. In implementing the policy, are there internal organizational, personnel, or procedural considerations that may present problems for the Contracting Officer, and how might he best address these issues?
2. To conform with new policy requirements, will it be necessary for the Contracting Officer to adopt new or revised methodologies in the solicitation, negotiation, and evaluation of Government and contractor proposals?
3. What has traditionally been the role of the Contracting Officer in the area of service contracting, and should that role be expanded under the guidelines of the revised Circular?
4. Does the Contracting Officer have new responsibilities for maintaining the integrity of the overall acquisition

process in the area of service contracting, and how might he best accomplish this important task?

The Contracting Officer faces significant challenges in assuring equitable implementation of the policy guidelines and is hampered in this effort by several factors including:

1. The lack of current uniform implementing DOD and Navy directives reflecting the latest policy guidance.
2. The absence of specific coverage of this policy in the draft Federal Acquisition Regulation (FAR) and the Defense Acquisition Regulation (DAR).
3. In the Navy, lack of familiarity by some contracting personnel with the procedures and the methodologies necessary to carry out the policy.
4. In the Navy, the existence of a dichotomy between the Systems Commands and the Field Commands as to the impact of the new policy.

It is of utmost importance that these problem areas be resolved. Due to the often controversial nature of the policy itself, a broad spectrum of different organizations are closely monitoring implementation efforts. These include the Civil Service Commission (CSC), Government unions, contractor associations, private industrial concerns, Congress, the General Accounting Office (GAO), the Office of Management and Budget (OMB), and the Office of Federal Procurement Policy (OFPP). As the transmittal letter accompanying the Circular notes:

The balanced approach in this revised circular is designed to achieve consistent policy implementation in all agencies, equitable treatment of all parties and improved economy and efficiency in providing goods and performing services needed by the Government. (Emphasis added) [67:1]

Many of the above mentioned organizations have a vested interest in the equitable implementation of the policy. The stakes are high, perhaps in the long run consisting of as many as a million Civil Service jobs and billions of dollars in Federal contracts, the vast majority with the Department of Defense. The focus of their attention may well be the acquisition process and in particular the performance of the Contracting Officer in that process.

C. SCOPE OF RESEARCH

The philosophy of reliance on the private sector to satisfy Government needs actually encompasses the entire acquisition spectrum. For example, even though A-76 does not specifically include Major System Acquisitions, which is covered under the guidelines of OMB Circular No. A-109, the two policy documents are mutually supportive. Circular A-76 states:

Major systems acquisitions are governed by the provisions of OMB Circular No. A-109, "Major System Acquisitions." Reliance on the private sector is one of the policies contained in Circular A-109 to ensure competitive consideration of all alternatives before making a decision as to the best method of satisfying an agency need. [64:4]

OMB Circular No. A-109 likewise references A-76 in its policy guidance. To assure the effectiveness and efficiency of the processes for acquiring major systems, the prime

emphasis will be to "rely on private industry in accordance with the policy established by OMB Circular A-76" [65:4]. Similar policies govern the acquisition of "non-major" systems in the various services.

Although the policy guidance of A-76 is generally construed to apply mainly to service functions, the emphasis of reliance on private commercial concerns for supplying needed end items, equipment, components and material is tacitly if not specifically included in the policy guidelines. End items produced incidental to or as a result of the service being performed are certainly covered by the policy guidelines. Additionally, Government owned-Contractor operated (GOCO) and Government owned-Government operated (GOGO) facilities are also encompassed by the A-76 policy, currently limited, however, only to new starts or expansions of existing capabilities. Both of these facilities produce end items.

Further examples of reliance on the private sector to provide supplies and related hardware is evidenced by several OFPP policy memoranda emphasizing the use of commercial type products and by two ongoing DOD programs, the Commercial Acquisition Program (CAP), and the Commercial Item Support Program (CISP).

Besides system acquisitions and supplies and hardware items, the third major area of reliance by the Government on private enterprise is service functions. In this category the Department of Defense may satisfy its needs in any of

three different ways, only one of which comes under the guidance of Circular A-76.

1. Expert and Consultant Services (Personal Services): Expert and Consultant Services are those which are performed by personnel who are exceptionally qualified in a particular field of endeavor and capable of performing some specialized function for the Department of Defense. Regulations covering the procurement of these services are covered in the Federal Personnel Manual, and they are obtained through the Office of Civilian Personnel.

2. Contractor Support Services (CSS) (Non-Personal Services): CSS are normally managerial advisory services of a white collar or professional nature involving support of specific programs. These services include, for example, system analysis studies, scientific and technical studies, automatic data processing (ADP) support, and general management support efforts. Additionally, CSS can include the contracting out of activities in support of a continuing in-house capability. In this instance the services could be performed by either white collar or blue collar workers but must be of a nonrecurring short term duration and in support of a specific project or program. These services are obtained in accordance with "normal acquisition and contracting procedures."

3. Commercial Industrial Type Activities Support Services (CITASS) (Non-Personal): CITASS come under the general coverage of the DOD Commercial Industrial Type

Activity (CITA) Program. This program is the vehicle DOD uses to implement the A-76 policy guidance. The program includes not only service functions but as noted earlier, certain aspects of the GOGO and GOCO operations. A CITA is an activity operated and managed by a DOD component that provides a product or service obtainable from a private commercial source. A CITA can be identified with an organization (e.g., a GOCO facility or an entire base support function) or a type of work (e.g., grounds maintenance, guard services, vehicle maintenance, etc.), but must be separable from other functions and a regularly needed activity of an operational nature. The major thrust of the effort has been and continues to be the blue collar service functions. However, white collar services are not excluded and, in fact, as the program gains impetus may be expected to increase.

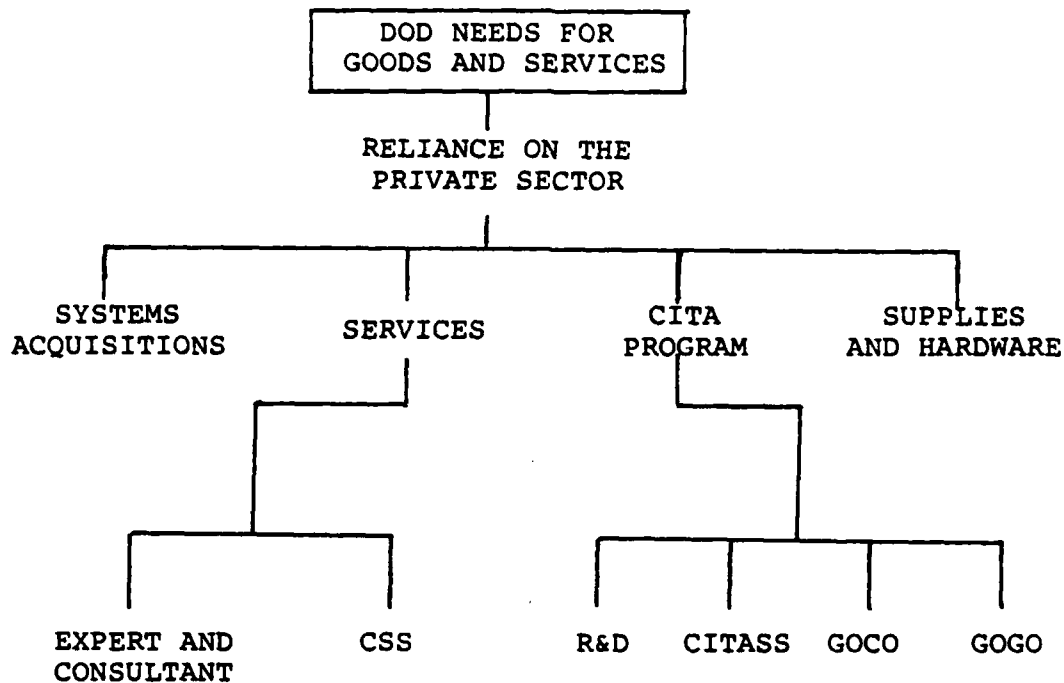
The key differences between CITASS and CSS is that the CITA program contemplates contracting-out the entire function for a sustained period of time whereas CSS are associated with the performance of specific short term tasks in support of in-house efforts. Both methods support the concept of reliance on the private sector. However, the CITA support services flow directly from the policy guidelines of A-76; CSS do not.

The scope of this research presentation will concentrate only on those functions that make up the CITA program excluding, however, any research and development type activities and

GOCO and GOGO facilities. This is necessary because the policy guidelines for R&D services and GOCO facilities are still in a state of flux. When the revised Circular was issued, concern was immediately expressed over the possible loss of in-house "core capability" in the R&D area. Compliance with the intent of the Circular to rely on the private commercial market to the possible detriment of in-house capability was therefore deferred for one year to allow further study of the potential impact of the new guidelines. Similar restrictions also apply to existing GOCO facilities.

Additionally, Congress in the FY80 Defense Authorization Act specified that expenditures of R&D funds would not be guided by the policies of OMB Circular A-76 for existing in-house capability other than as it relates to maintenance and support functions [15]. This suggests that a significant portion of the R&D services may well be excluded from the CITA program. However, until the Circular is revised and clarified, certain R&D functions may continue to fall under the coverage of the program.

Thus, we are left with the CITASS as the major area in the CITA program for which clear policy guidelines have been established. Since the thrust of this research will be on implementation progress not policy development, data accumulation and analysis will center on the Commercial Industrial Type Activity Support Services. The following schematic identifies the scope of this research within the broad acquisition spectrum.



Since the CITA program is mainly a DOD effort, the research will not include implementation aspects as they relate to any other Executive Agency. The study will, furthermore, concentrate on the Navy implementation effort and, in particular, on the issues raised for the Contracting Officer in the Navy Field Procurement System (NFPS). Efforts of other services, notably the Air Force, will be included when appropriate.

D. RESEARCH METHODOLOGY

Data for this research effort was obtained from two primary sources. First, interviews were conducted with personnel in the acquisition profession at both the policy level

and at field and base commands. Included were representatives of OFPP, the Naval Material Command (NAVMAT), and the Navy Supply Systems Command (NAVSUP). At the field level, interviews were held with personnel from the Regional Contracting Department, Naval Supply Center, Oakland Ca., (RCD, NSCO); Naval Regional Contracting Offices (NRCOs) in Long Beach, Ca., and Washington, D.C.; and with base contracting personnel at Travis Air Force Base, Fairfield, Ca. To encourage open and frank comments, anonymity regarding specific remarks was promised on several occasions. A complete list of all key personnel contacted is included in Appendix A.

The second method for obtaining data consisted of a review of the existing literature base to identify previous problems associated with the implementation of the Circular. Excellent historical material in this regard is available through the Defense Logistics Studies Information Exchange (DLSIE) under the search locators of Contracted Services, CITA, and Make or Buy. The Report of the Commission on Government Procurement also provided insight into the evolution of the policy. Numerous General Accounting Office (GAO) Reports, in particular those addressing the status of the recommendations of the Commission on Government Procurement, highlighted problem areas.

Data on more current implementation issues was more readily obtainable at the activities visited. This material included procurement directives, messages, point papers, and

training course materials. Those that would be of particular interest to contracting personnel have been highlighted throughout the research presentation and are listed in the Bibliography.

E. KEY DEFINITIONS AND ABBREVIATIONS

Commercial or Industrial Type Activity (CITA). An activity operated and managed by a Federal Executive Agency that provides a product or service obtainable from a private commercial source. The activity can be identified with an organization or a type of work, but must be: (1) separable from other functions so as to be suitable for performance either in-house or by contract; and (2) a regularly needed activity of an operational nature, not a one-time activity of short duration associated with support of a particular project. A CITA may also be designated as a Commercial or Industrial (C/I) activity.

Commercial or Industrial Type Activity Support Service (CITASS). The services provided as a result of or in conjunction with the operation of a Commercial Industrial Type Activity. A CITASS may also be designated as a Commercial or Industrial (C/I) activity support service.

Conversion. The transfer of work from a Government commercial or industrial activity to performance by a contractor.

Cost Comparison (or Comparative Cost Analysis). An accurate determination of whether it is more economical

to acquire the needed products or services from the private sector or from an existing or proposed Government commercial or industrial activity.

Cost Differentials. The cost margins established by OMB Circular A-76 that must be exceeded before performing a "new-start" in-house and before converting an in-house activity to contract performance.

Expansion. The modernization, replacement, upgrade, or enlargement of a CITA that involves adding a capital investment of \$100,000 or more or increasing the annual operations costs by \$200,000 or more, provided the increase exceeds 20 percent of the capital investment or annual operating cost. A consolidation of two or more activities is not an expansion unless the capital investment or annual operating cost exceeds the total from the individual activities by the amount of the threshold.

Government Function. A Government function is one which must be performed by the Government (in-house) due to a special relationship in executing governmental responsibilities including (1) discretionary application of Government authority, (2) monetary transactions and entitlements, and (3) maintenance of in-house technical core capabilities.

New Start. A newly established Government commercial industrial activity, including a transfer of work from contract to in-house performance. Also included is any expansion which would increase capital investment or annual operating costs by 100 percent or more.

Office of Management and Budget Circular No. A-76.

Executive Branch directive establishing the policies and procedures to be used to determine whether needed commercial or industrial type work will be accomplished by contract with private sources or in-house using Government facilities and personnel.

Private, Commercial Source. A private business, university, or other non-federal activity located in the United States, its territories and possessions, or the Commonwealth of Puerto Rico that provides a commercial or industrial product or service required by Government agencies.

F. ORGANIZATION OF THE STUDY

The research presentation is divided into seven chapters. In this chapter the objectives of the research have been set forth, the scope and thrust of the effort identified, potential problem areas highlighted, and methodologies for data gathering and analysis presented.

Chapter II provides the background material surrounding the development and implementation of OMB Circular A-76. This is from a historical and more or less chronological viewpoint including Executive and Legislative considerations. The content of the Circular is also reviewed in some detail. The evolution of the CITA program in the Department of Defense is also examined, and the latest implementing guidance presented.

In Chapter III a framework is established for reviewing the implementation issues as they relate to the Contracting Officer. The role of the Contracting Officer in the CITA program is identified and a structured approach developed to highlight his key responsibilities.

In Chapters IV, V and VI, issues and potential problem areas developed as a result of data accumulation are presented and analyzed. This is accomplished in terms of the framework established in Chapter III.

Chapter VII summarizes the results of the research and provides conclusions and recommendations to assist the Contracting Officer in the implementation of the current policy.

II. BACKGROUND

The development of a comprehensive policy of reliance on the private sector to satisfy Government needs can best be described as having been surrounded by confusion, controversy, and turbulence [34]. The Executive Branch's policy has undergone numerous changes. Congress has expressed concern about how the policy is being implemented, but has been unable to develop legislation to support executive guidelines [34]. As a result, timely agency implementation efforts have been inconsistent and relatively ineffective [34]. It appears now, however, that facing shrinking resources in both manpower and money, DOD is committed to the concept of using commercial sources to accomplish many of the support functions currently performed by military and civil service personnel.

In this chapter, the evolution of the current policy will be reviewed from its formal inception in 1955 up to the present time. Executive and legislative actions and interactions will be presented. Next, the current circular will be analyzed in some detail, noting in particular, changes from the previous circulars. Finally, the efforts of DOD and the Navy to implement the policy guidelines through the auspices of the Commercial Industrial Type Activities Program will be noted.

A. EXECUTIVE ACTION

The Executive policy of reliance on the private sector for goods and services dates back over 25 years. In January

of 1955 during the Eisenhower Administration the Bureau of the Budget (now the Office of Management and Budget), issued BOB Bulletin No. 55-4. The Bulletin stated in part that ...

It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its' own use if such product or service can be procured from private enterprise through ordinary channels...Exceptions to this policy shall be made by the head of any agency only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise. [2:1]

Citing an inability to equitably compare costs of in-house operations with private enterprise because of different accounting systems and business methods, the bulletin indicated the decision to use the private sector would not be dependent on whether the private sector could perform the function at less cost [8]. As a general guide, the policy was adopted that the apparent cost of a product would not be a deciding factor between in-house versus contractor performance when adequate competition existed in the private market place [8].

This bulletin was followed by BOB Bulletins 57-7 and 60-2 in 1957 and 1959 respectively, which attempted to clarify and expand the original policy guidance. BOB 60-2 was the first directive to recognize, however, that there were indeed certain factors which might make it necessary for the Government to provide goods and services for its own use including national security and relatively large and disproportionately high costs of commercial sources to perform the services [3].

Commenting on the progress of the policy of reliance on the private sector to this point, Mr. Elmer Staats, the then Deputy Director of the Bureau of the Budget, indicated that of a current inventory of in-house CITAs of almost 19,000 only about 1700 had been discontinued or converted to performance by the private sector since the inception of BOB Bulletin 55-4 [19].

Even though the number of conversions did not appear to be extraordinarily high, subsequent developments revolved around concerns regarding the effect the policy was having on the career development of civil service personnel, the possible illegality of some of the contracts when Government personnel were directly supervising contractor employees, and some indication that even though contracts had been awarded to private concerns, in-house performance would be less costly.

Due to these and other problem areas, on 3 March 1966, BOB Bulletin No. 60-2 was cancelled and replaced by the original Circular No. A-76. The following year Transmittal Memorandum No. 1 was issued to specify that incremental costing would be used in determining in-house costs. The Circular then remained basically unchanged for the next nine years.

Circular A-76 made a number of significant changes to the policies and procedures of the previous BOB bulletins. First, it reduced somewhat the emphasis in favor of Government procurement from the private sector by emphasizing its primary objective to be the effective and efficient accomplishment of Government programs rather than any benefit to a particular

segment of the economy. Secondly, it provided more guidance relative to the details involved in making cost comparisons between in-house and private sector performance. And third, it refined inventory review and evaluation procedures [4].

Additionally, in November of 1969, Congress created the Commission on Government Procurement to recommend methods to promote the economy, efficiency, and effectiveness of procurement by the Executive Branch. In its 1972 report, the Commission recommended, among other conclusions, that a new approach and stronger implementation policy was needed to achieve consistent and timely Government-wide application of the policies set forth in Circular A-76. In an attempt to provide centralized management responsibility for all Government procurement, Congress in August 1974 enacted Public Law 93-400 establishing the Office of Federal Procurement Policy (OFPP) under the Executive Office of the Management and Budget. One of the many responsibilities given to the new office was monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Government on the private sector to provide needed property and services [18].

OFPP became operational in 1975, and since that time has been vigorously exploring various methods to achieve improved agency compliance with Circular A-76. OFPP personnel have been conducting compliance reviews including field visits and spot checks of specific activities. Agencies are informed of discrepancies and of cases where in-house activity has not been justified. Numerous meetings have been held with interested

parties, including Agency Heads, Government union representatives, Congressional Representatives, private sector spokesmen, the Civil Service Commission, and the General Accounting Office. Proposed revisions to the Circular have been published in the Federal Register for public review by interested individuals and organizations.

In 1976 and 1977 two additional Transmittal Memorandums changed the method for calculating the costs of Federal employee insurance (health and life) and retirement benefits. Prior to 1976 these costs were established at 10.7% of base pay. Transmittal Memorandum No. 2 increased it to 28.7% and No. 3 reduced it to 18.1%. Since labor costs account for the vast majority of expenditure in determining the most economical method for performing the function, the large swings in this rate can be a significant factor in determining whether the work will be performed in-house or contracted-out when conducting a cost comparison.

Based on its review of existing policy guidelines, OFPP determined that more succinct and definitive guidance was still required. Therefore, on 29 March 1979, following a protracted period of public review and comment, OMB published Transmittal Memorandum No. 4 to the original circular accompanied by a Supplemental Cost Comparison Handbook. This handbook provided the detailed guidance necessary to compare in-house and contract costs on an equitable basis. The current Circular adopts a more balanced management approach designed

to produce consistency, predictability, and equity for affected workers, agencies, and contractors [31].

B. CONGRESSIONAL INVOLVEMENT

For the last 45 years, special and standing committees of Congress have conducted various studies of the extent to which the Federal Government is engaged in commercial type activities or may be in competition with private industry. In 1932 and again in 1955 the First and Second Hoover Commissions expressed concern over the extent to which the Government was in essence putting itself into business by engaging in activities that could be performed by the private sector.

During the '40s and '50s several Bills were offered in both the House of Representatives and Senate to restrict the Government from competing with private industry in the furnishing of goods and services. None of these Bills was ever enacted into law.

When in 1955 the Executive Branch promulgated Bureau of the Budget Bulletin No. 55-4 emphasizing the increased use of the private sector, the program met with considerable opposition in Congress. Therefore, in the 1956 Defense Appropriation Act Congress required a case-by-case approval for any base closures or reductions from implementation of the policy [10].

In 1966 Congress commenced studies and hearings to review the procurement methods being used by Government agencies to obtain needed goods and services. These hearings lasted

well over three years and resulted in the creation of the Commission on Government Procurement in late 1969.

During the 1970s Congressional debate on the subject of contracting-out continued. In 1974 Congressman Jerome Waldie, an ardent foe of an overly ambitious contracting-out program, introduced a resolution in direct opposition to Executive branch policy guidelines. The resolution would have expressed the policy that the Government should provide for its needs and services in-house by use of its own manpower and not by use of the private enterprise system [13]. This resolution was not accepted by either House of Congress.

In the opposite vein, in 1977 Congressman Olin E. Teague introduced a resolution to clarify and reaffirm Government purchasing policies. In part the bill indicated that since optimum economy, efficiency and productivity were in the private sector, the Government should rely on private commercial sources to meet its needs [14]. No action was taken on this resolution either.

Although Congress has not been able to agree on a uniform policy of its' own, it has continued to play a part in the actual implementation of the Executive program, most notably through the DOD Authorization and Appropriation Acts. In the FY 1978 Defense Department Appropriations Act, temporary bans on any new contracts for certain base operation functions were prescribed. Pertinent provisions are indicated below:

None of the funds appropriated by this act may be used to (1) convert base operating and support functions, excluding real property maintenance and

repair, to commercial contract during the period of October 1, 1977 through September 30, 1978.... None of the funds appropriated by this act may be obligated for commercial contracts to be performed at an installation facility....if the work to be physically performed at an installation or facility during the fiscal year 1978 by commercial contracts would result in a reduction of employees of the Government of the United States at that installation or facility... [11:24]

The restrictions were imposed primarily because of adverse reaction to the OMB increase in retirement and health factors to 28.7% and because existing procedures were considered too general allowing wide differences in practice among and within the DOD service components.

Additionally, the FY78 Appropriation Authorization Act required that the Office of the Secretary of Defense (OSD) submit a report detailing its policy changes since 1976 and prohibited any conversions to contract unless the policies in effect before 30 June 1976 were followed [12]. The net effect of this was to cancel Executive Transmittal Memorandums 2 and 3 causing the retirement and health benefits factors to revert to their pre-1976 level of 10.7% of base pay. This would favor in-house performance in any cost comparison because the retirement and health benefit percentages are applied directly to the basic labor rates of civil service personnel.

In the FY 1980 DOD Authorization Act, Congress exempted a large portion of the Research and Development activities from the policy guidelines of A-76 and specifically prescribed that the Circular would not be used to circumvent any civilian

personnel ceilings [15,16]. It also required that the Secretary of Defense would certify to Congress that the in-house cost calculation for the functions currently being reviewed for possible conversion to contract was based on the most efficient and cost effective organization for in-house performance. Reporting requirements were mandated to keep Congress continuously aware of the current status of DOD implementation progress [16].

Possibly the most diligent effort to reach some sort of comprehensive congressional policy has been the introduction of Senate Bill S-5, "The Federal Acquisition Reform Act", by Senator Lawton Chiles, Chairman of the Subcommittee on Federal Spending Practices and Open Government of the Committee of Governmental Affairs. It was introduced in January 1979, but Congress took no action on it that year prior to recessing. In its present form it states that:

It is the policy of the United States that when acquiring property and services for the use of the Federal Government, the Government shall whenever practicable rely on the private sector... (emphasis added) [17:4]

The prospects for adoption of this bill are uncertain at this time.

C. GENERAL ACCOUNTING OFFICE REVIEW

Throughout the history of the development of policy guidance, the General Accounting Office (GAO), the audit and investigative arm of Congress, has tracked implementation efforts within the Executive Agencies most notably in DOD.

Additional organizations such as the Defense Audit Service and the Office of the Assistant Secretary of Defense (Manpower Reserve Affairs and Logistics), ASD (MRA&L), have conducted studies on implementation progress and problems.

During 1971 and 1972, GAO reviewed implementation of the 1967 Circular and reported numerous deficiencies. Since 1972 the GAO has issued no less than 90 relevant reports on the general subject of reliance on the private sector to satisfy Government product and service needs. Most of the reports are highly critical of the shortcomings in the administration, implementation, and overall management of the program. In 1978 GAO issued perhaps its most comprehensive report to date on the entire subject area. It cited the following specific problems areas as impeding policy implementation [34].

1. The policy has not had clear executive and legislative branch support.
2. Implementation by executive departments and agencies has been inconsistent and relatively ineffective.
3. The decision to contract-out work or keep it in-house is not always made on a strictly economic basis.
4. The decision to contract-out work is often influenced by personnel ceilings.
5. There is a reluctance on the part of agencies to carry out the policy.
6. Agencies experience difficulty in knowing when and how to accomplish cost comparisons.

7. There is a lack of a clear understanding by agencies as to which programs are to be included as commercial or industrial activities.

8. Required reviews of the commercial or industrial activities are far behind schedule.

The above list is only representative of the complexities involved in the implementation of the Circular. Perhaps the biggest hinderance has been the inability to develop legislation [38]. The most recent GAO report in May of 1979 highlights this fact. GAO noted that the Commission on Government Procurement developed 149 integrated recommendations to improve the acquisition process that required Congressional and Executive branch action. The Executive branch rejected several of the recommendations including A-22 which was to establish a policy in law of Government reliance on the private enterprise system when prices are reasonable. OFPP rejected that recommendation claiming, and probably rightly so, that it found little support for legislative action. GAO also noted that the current revised circular departs significantly from the Commission's recommendations [38].

D. OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76

The latest Circular, released on 29 March 1979, is based on three equally binding concepts. The Circular still states that the Government should primarily rely on the private sector for goods and services. However, it also indicates

that there are certain functions that are inherently Governmental in nature and should be performed in-house with Government personnel. A "Government function" is one which must be performed in-house due to a special relationship in executing governmental responsibilities. Examples would include discretionary application of Government authority, monitoring transactions and entitlements, and the maintenance of in-house core capabilities in the area of research and development.

Lastly, it indicates that when commercial performance is feasible and no overriding factors require in-house performance, the most economical performance should be pursued including a rigorous and thorough comparison of in-house versus contractor costs.

Additional provisions include the prohibition of personal services contracts which create an employer-employee relationship between the Government and the contractor. The circular will not be used to justify conversion solely on the basis of personnel ceiling restrictions and will not be used when it is inconsistent with any laws, treaties, or international agreements. It also indicates that excess property and services available from other agencies will be used in preference to new starts or conversions.

Under the old circular guidelines there were five exceptions to reliance on the private sector including: [4]

1. Procurement of the product or service from a commercial source would disrupt or materially delay an agency's program.

2. It is necessary for the Government to conduct a commercial or industrial activity for purpose of combat support or for individual and unit retraining of military personnel or to maintain or strengthen mobilization readiness.

3. A satisfactory commercial source is not available and cannot be developed in time to provide a product or service when it is needed. Urgency alone, however, is not an adequate justification for use of this exception.

4. The product or service is available from another Federal Agency.

5. Procurement of the product or service from a commercial source will result in a higher cost to the Government.

The new circular clarifies and combines the five exceptions into only three: [31,64]

1. No satisfactory commercial source is available to perform the service which includes any delay and disruption to ongoing Government programs.

2. It is in the interest of National Defense to maintain the capacity within the Government.

3. The Government can perform the service or provide the product at a lower cost than the private sector.

Justification for the performance of a service in-house due to nonavailability of commercial sources requires extensive documentation of attempts to locate or develop an adequate

commercial source. At a minimum, announcements must be made in the Commerce Business Daily and assistance should be sought from such sources as the General Services Administration (GSA), the Small Business Administration (SBA), and similar organizations. The possibility of strikes, or urgency of the requirement, or the fact that the procurement is classified are not sufficient reasons alone to utilize this exception.

Justification for a Government CITA on the basis of National Defense must be to satisfy training requirements or career development and rotation patterns of military personnel. The personnel - civilian or military - must be utilized in a direct combat support role or needed to maintain a core capability in intermediate or depot level maintenance. Such justifications must be approved at the Military Department Assistant Secretary level, in the case of the Navy, ASN (MRA&L).

The policies for justification of in-house performance based on lower cost have been clarified and formalized considerably over the previous Circular. Prior to the issuance of Revision No. 4, the methods to calculate and compare contractor versus Government costs were too general to achieve desirable uniformity [66]. With such insufficient guidelines, it was difficult to make cost comparisons between commercial sources and Government in-house performance [66]. Many organizations became particularly emotional about this issue.

The Government unions were most vocal in denouncing several Air Force studies that showed considerable savings were to be had by contracting-out existing base support functions. They claimed that the studies were too short to be meaningful and that contracting-out involves "hidden costs" that may not appear until much later in the program [29]. Congress indicated they felt some of the high costs associated with the use of civil service personnel were due to bad management rather than actual higher wage and overhead rates [29]. GAO in their normally succinct manner indicated Federal Agencies seldom prepared cost estimates anyway, and when they did prepare one, it was invariably wrong [37]. Basically, the difficulty centered on the inability to determine accurate commercial and Government costs on any one individual program and to equate them on a fair and equitable basis. The various methods used to determine contractor costs including informational solicitations, Government engineering estimates, and market surveys, were heavily criticized [37].

Therefore, to rectify these problems, the new Circular establishes "common ground rules" for analyzing both Government in-house and contractor costs including the use of Supplement No. 1 to the Circular, the "Cost Comparison Handbook," in all instances where a cost comparison is to be prepared. These common rules include: [64]

1. The use of the same scope of work and level of performance in analysis of in-house and contract out costs.

2. The use of the standard cost factors as specified in the Cost Comparison Handbook.

3. The use of full costing in preparation of the Government estimate.

4. The recommendation to use pre-priced options to the maximum extent possible to preclude "buy-ins" and allow for amortization of contractor start up costs.

5. The contract price must be obtained by soliciting firm bids or proposals from the private sector with the full intent to award a contract if it is more cost effective.

The circular also raises the dollar limit from \$50,000 to \$100,000 for which a cost comparison is required. The circular also provides for the use of differentials in considering conversions or new starts and expansions. An existing in-house activity will not be converted to contract performance unless such conversion will result in savings of more than 10% of estimated Government personnel costs. Conversely, a new start will be contracted-out unless the potential savings by Government in-house performance are greater than 10% of Government personnel costs plus 25% of equipment and facilities costs. This differential is designed to maintain the status quo for existing in-house work but favors contracting-out for all new programs.

The Circular still provides for the use of services from another agency if there is a formal program established to utilize excess capacity, such as the GSA Automatic Data Processing (ADP) program. Agencies, however, may not expand to meet other agency's requirements.

Agencies are required to compile a complete inventory of all CITAs to be updated annually as was the case with earlier revisions to the Circular. However, greater detail in reporting is required under the new guidelines. The review schedule has likewise been more definitized. Under the old guidelines a triennial review was required. Now agencies must establish an initial three year review schedule, publish it for review by the general public, and for those activities approved for retention in-house during the initial review, schedule follow-on reviews at least once every five years.

The Circular also specifically encourages the use of set-aside programs to ensure that small businesses, including those managed or owned by disadvantaged persons, receive a fair portion of Government contracts. Contracts previously awarded under set-aside programs will not be reviewed again for possible in-house performance. Additionally, new requirements for goods and services not previously provided in-house that would be suitable for a set-aside should be offered up for contract without a cost comparison analysis. However, no in-house activity valued in excess of \$100,000 will be converted to contract performance unless justified by a cost study.

The new Circular also provides more complete definitions of "new starts" and "expansions" of existing in-house capabilities and requires Assistant Secretarial approval for those activities which will require a large initial capital investment by the Government.

Finally, the Circular requires that administrative procedures must be established in each agency to resolve questions on in-house/contract decisions. Upon written request from an affected party, the agency must have the decision reviewed by an official of the same or higher level than the official who approved the initial decision. The reviewing official must assure that the decisions are fair and equitable to all interested parties and comply with the guidelines of the policy expressed in the Circular.

The decisions of the reviewing official are, however, final and not subject to arbitration, negotiation or other agreements with the affected party. This procedure applies to only the decision to contract-out the function or perform it in-house and not to questions of award to one contractor or another. A copy of the revised Circular has been included as Appendix B.

E. DOD AND NAVY IMPLEMENTATION: THE COMMERCIAL INDUSTRIAL ACTIVITIES PROGRAM

The Department of Defense implements OMB Circular A-76 through the CITA program and other departmental directives. As noted earlier, a commercial or industrial type activity is one which is managed and operated by a Federal agency and produces goods or services which could be obtained from a private source including not only commercial concerns but universities and other non-federal activities located in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

The Navy has the largest Commercial-Industrial inventory of any Federal Agency. The scope and size of that inventory can be seen below in the figures for FY 1978 [68].

	DOD		NAVY	
	DOLLARS (Billions)	MAN- YEARS	DOLLARS (Billions)	MAN- YEARS
IN-HOUSE	7.6	314,000	3.5	140,000
CONTRACT	4.5	135,000	1.7	34,000
TOTAL	12.1	449,000	5.2	174,000

In FY 1979 and 1980 DOD planned to convert to contract those in-house functions involving end strengths of 10,000 and 23,000 personnel respectively. These conversions involve over 900 industrial work centers [69].

Implementation guidance for the program within the Department of Defense is found in two directives; DOD INST 4100.15 of 8 July 1971 (with Change-1 incorporated) and DOD INST 4100.33 of 16 July 1971. The first instruction provides general information on the procedures to be used in DOD implementation of A-76 policies as expressed in the original circular issued in 1967. DOD INST 4100.33 provides detailed guidance and requirements for implementing a review of C/I activities in DOD. Although the two instructions are not in total concert with the revised Circular as issued in 1979, OSD has provided written guidance by letters and other methods to conform with the new requirements.

Currently a C/I Action is to be viewed as being related to both Reduction in Force (RIF) Actions and Base Realignments (SFR) Actions [69]. OSD directed that the services: [69]

1. prepare three year review schedules for public release,
2. identify FY80 functions to be studied for public release,
3. make Congressional notice of inventory schedules as required by the DOD Authorizations Act, and
4. make Congressional notification prior to award of any contract.

In November 1979 DOD published for public review proposed revisions to both current implementing directives to bring them into conformance with current A-76 guidelines. Comments from interested persons were due before 20 December 1979 [30]. These draft revisions will be used in later chapters to analyze those issues that may be of significant interest to acquisition and contracting personnel.

Navy implementation guidance is provided at the Secretarial level by SECNAVINST 4863.44B of 4 April 1975 and SECNAVINST 5700.9C of 27 February 1974. The first instruction directs the Chief of Naval Operations (CNO) to implement the C/I activities program within his area of responsibility and the second, among other items, indicates that all contracting-out actions which will adversely affect either military or civilian personnel must be approved by CNO.

The Navy has elected to centrally determine at the CNO level the specific functions to be reviewed in any one fiscal year on an overall three year review cycle. This is accomplished by the use of fact sheets submitted by each Navy

activity via the major claimant for incorporation into the review cycle. The fact sheets identify all the specific functions currently being reviewed along with other data concerning number of personnel involved and how the function is currently being performed (either in-house or by contract). The receipt of the fact sheet at CNO means there is no compelling reason to retain performance of the function by in-house personnel.

CNO approval and return of the fact sheet provides authority to proceed with the solicitation process. Originally, prior to the award of any contract which would result in a RIF action, CNO was to be notified of the results of the cost comparison and the contracting activity was to withhold award for five days pending Congressional notification. Direct approval from CNO to award a contract was not required if the above process was followed. However, in October of 1979 the Secretary of the Navy directed that all activities provide, in addition to other required data, an assessment of the Equal Employment Opportunity (EEO) impact the decision to award a contract would have. Now, neither contracts nor RIF notices will be issued until a specific CNO approval message is received [71].

CNO has delegated much of the detailed implementation of the program to the Chief of Naval Material (CNM). In accordance with NAVMATINST 4860.12A of 25 January 1972, each commanding officer of a shore activity is responsible for the execution and monitoring of the C/I activities program at his

activity. The Naval Material Industrial Resources Office (NAVMIRO) has been assigned responsibility to monitor over-all operation and effectiveness of the C/I activities program and to compile, maintain, and update annually a central, consolidated inventory of Navy managed and operated CITAs and Navy procured contract services.

Additionally, in December 1976 CNM issued NAVMAT Notice 4860 of 21 Dec 1976 which revised somewhat the C/I activities reporting procedures. More importantly from the Contracting Officer's standpoint, it included CNM Procurement Planning Memorandum (PPM) No. 49 which provided the first definitive guidance on the Navy's use of the firm bid/offer procedure in conjunction with the cost comparison process.

In March of 1977 the Naval Supply Systems Command (NAVSUP) issued NAVSUPINST 4280.6 to promulgate instructions for the use of the firm bid/offer procedure by Navy Field Procurement System (NFPS) Activities in support of the Navy's CITA program. This directive provides guidance as to the responsibilities of the contracting officer in the firm bid/offer procedure.

The reader will note that all the directives indicated throughout this presentation were in effect prior to the issuance of the latest OMB Circular and have not yet been revised to reflect the new Circular policy guidelines. During 1978 and 1979 considerable interim guidance - mainly in the form of messages - was provided to activities both during revision of the Circular and after its issuance.

Interviews indicated that the lack of stable implementing directives has been one of the major factors affecting Contracting Officers in the Navy Field Procurement System.

F. SUMMARY

Prior to World War II, the Department of Defense provided most of the products and services that it required in-house with Federal employees and Government owned facilities. During the war, the expansion of requirements and growing complexity of weapons systems necessitated increased reliance on private firms. This environment continued into the 1950s wherein the Executive Branch formulated the first general policy of reliance on the private sector.

BOB Bulletin 55-4 and subsequent bulletins carried the policy forward into the sixties. In 1967, what at that time was thought to be definitive guidance on this subject, was provided by issuance of OMB Circular No. A-76. However, it too underwent several changes culminating in the issuance of a completely revised Circular in 1979. The 1979 Circular differs considerably from its predecessors and represents an attempt to provide more uniform and definitive guidance.

Although the Executive branch has generally taken the lead in policy development, Congress has conducted numerous hearings and issued several reports regarding the extent to which the Government is engaged in activities which can be performed by private enterprise. A number of Bills have been introduced to establish the policy in statute, but no

legislative enactment has resulted. Congress has also voiced intermittent displeasure with DOD implementation progress in part due to continuing GAO criticism. Since 1972 GAO has issued no less than 90 reports directly or indirectly relating to the general ineffectiveness of Executive Agency implementation efforts. Although unable to develop comprehensive legislation, Congress has made its continuing interest known through various inputs to DOD Authorization and Appropriation Acts.

The Department of Defense implements A-76 policy through the Commercial or Industrial Activities (C/I) Program. DOD and Navy implementing directives and instructions are well established but have not yet been revised to reflect the latest policy guidance. Interim guidance has been provided by separate correspondence including letters and messages.

In the next chapter, the focus will shift to the framework within which the Contracting Officer operates under the existing directives. Utilizing the acquisition process as a backdrop, the significant issues he faces in implementing the new policy guidelines will be explored and those which may present potential problems will be identified.

III. FRAMEWORK

Before developing in full the framework to be used in analyzing the Contracting Officer's responsibilities in implementing current A-76 policy guidelines, it is necessary to briefly review the cost comparison process. The cost comparison process is, from the Contracting Officer's viewpoint, the cornerstone of the contracting effort and is the key element which distinguishes CITA Support Service contracting from other types of service contracting efforts. It is therefore necessary to obtain some familiarity with the procedures involved in this process.

A. THE COST COMPARISON PROCESS

The cost comparison process commences with the establishment of a Task Group to prepare an overall plan for obtaining the desired service. The Task Group's initial responsibilities are the establishment of an acquisition schedule and development of a detailed statement of work (SOW). The SOW will be used by the Contracting Officer to solicit bids or proposals from prospective contractors and will also form the basis for preparation of the Government in-house cost estimate.

After reviewing the SOW, the Contracting Officer issues solicitations to prospective contractors who prepare and return their bids or proposals. At the same time, the Task Group is preparing the in-house Government cost estimate to

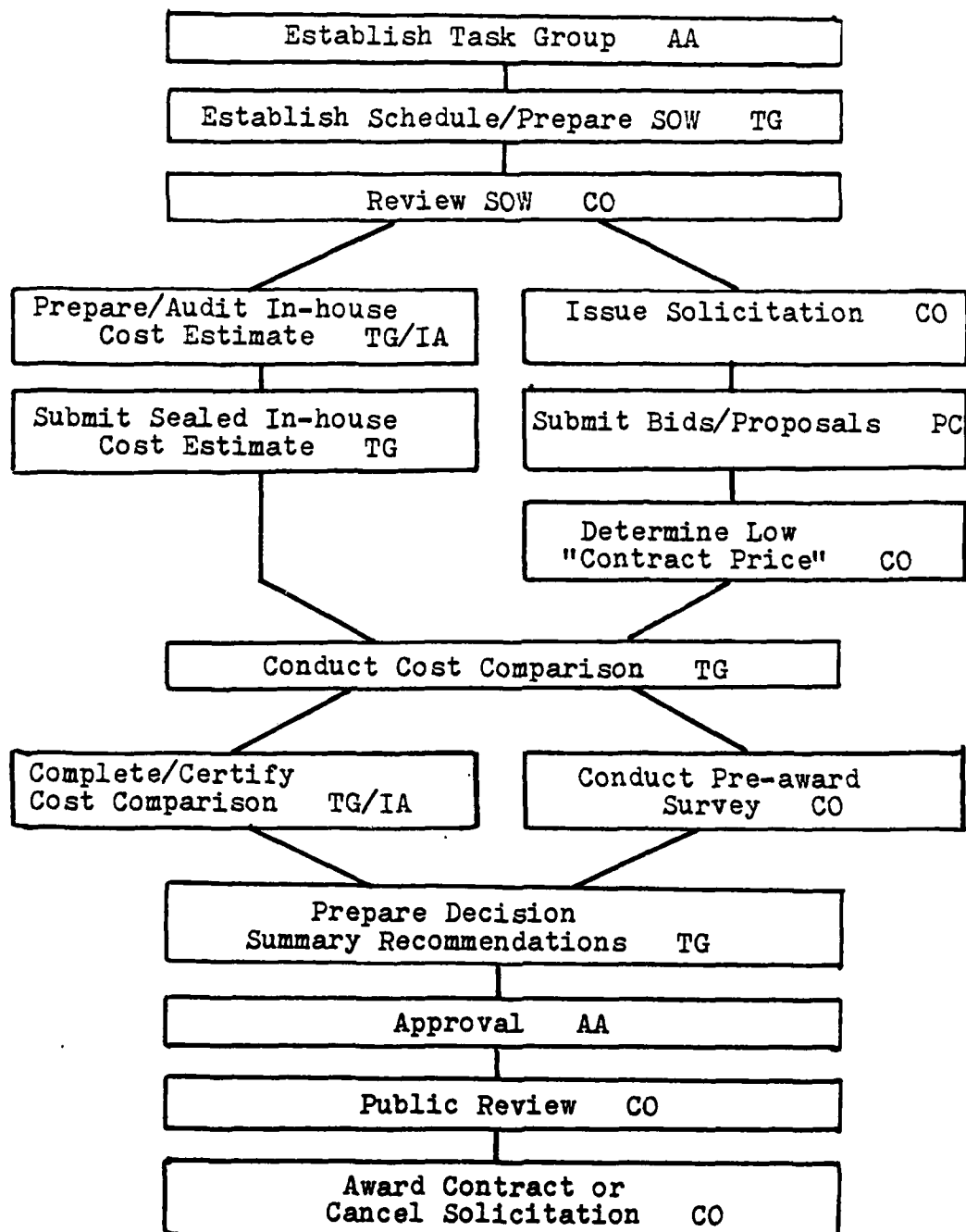
perform the same service. The Government cost estimate is audited for accuracy and conformance to prescribed guidelines, sealed, and submitted to the Contracting Officer.

When bids from prospective contractors have been received or negotiations completed, the Contracting Officer will determine the low "contract price". As part of the cost comparison, it will be necessary to adjust the "contract price" to reflect the true cost to the Government for private sector performance of the service. The total will then be compared with the in-house Government cost estimate and an apparent winner will be determined.

The Task Group will complete and certify the cost comparison, and it is again subjected to an audit. At the same time, if the total private industry cost appears to be lower than the Government in-house cost estimate, the Contracting Officer may conduct a pre-award survey on the lower offerer.

Upon completion of the audit and the pre-award survey, the Task Group will send its recommendations as to whether the function should be accomplished in-house or by contract to the Approving Authority. The Approving Authority will make a final decision and forward it to the Contracting Officer. The Contracting Officer will announce the results of the cost study to the general public and allow time for review by interested parties. Upon completion of the review period, he will either award a contract or cancel the solicitation. Exhibit I provides an overview of the process.

Exhibit I. COST COMPARISON PROCESS



Responsibility for each step is indicated by the legend:

AA - Approving Authority
 TG - Task Group
 CO - Contracting Officer

IA - Independent Auditor
 PC - Prospective Contractor

It can be seen from this brief review that many of the responsibilities of the Contracting Officer lie within the cost comparison process itself. At first glance, it may appear that there are no new or different issues for the Contracting Officer in this process. Reviewing SOWs, issuing solicitations, reviewing contractor proposals, determining the low bid/offer and conducting pre-award surveys, are not new tasks for the Contracting Officer. However, as will become evident later, he does face new and challenging issues within this limited process and additionally may be required to lend his professional expertise in other related matters.

B. FRAMEWORK DEVELOPMENT

The question comes to mind as to whether the Contracting Officer has any specific responsibilities prior to receipt of the purchase request in the contracting office. The answer is a definite yes. For example, the Circular itself specifies that before a decision can be made that the function under review must be performed in-house due to the lack of a satisfactory commercial source, notices must be placed in the Commerce Business Daily advising the general public of the Government's requirements. This is a function that should be performed by the Contracting Officer and is an example of an action and a responsibility which could result in no purchase request even being submitted to the contract office. Here, then, the Contracting Officer is performing an action more closely

associated with the assessment of the CITA program than with strictly contracting matters.

In a similar vein, might it not be necessary for him to review his own internal organization, staffing and workload patterns to ensure his office is prepared to fully implement the policy guidelines? If so, this is part of good acquisition management but not really part of the contracting process. It is better defined as a planning function. What about after the award of the contract? Will the Contracting Officer be able to delegate most of the contract administration to one of the Defense Contract Administration Services Offices without further concern? Due to the nature of the contract itself and possible phase-in problems that could arise during conversion from in-house to contract performance, that prospect is not likely. It, therefore, appears necessary to develop a broader framework than the cost comparison process itself to identify issues and potential problem areas for the Contracting Officer.

The framework for this research effort has been divided into three distinct phases: Phase I, Assessment of the Commercial Industrial Type Activities; Phase II, Acquisition; and Phase III, Contract Administration. Additionally, the Acquisition Phase has been divided into two sub phases-- Planning and Contracting. The Contracting sub-phase includes the pre-solicitation, solicitation/evaluation, and award cycles. One phase follows another with definite milestones

indicating completion of one phase and commencement of the next. This arrangement is depicted in Exhibit II.

Phase I is a continually ongoing process, however, for any individual function or group of functions it can be assumed to be completed when a determination is made that there is no justifiable need, short of lower cost, to retain the function in-house. The following activities are typical of those pursued in Phase I:

1. Preparation of the C/I inventory.
2. Establishment of review schedules.
3. Justification for in-house performance based on National Defense.
4. Justification for in-house performance based on non-availability of commercial sources.
5. Preparation of and submission of fact sheets.
6. Grouping of similar type functions for possible larger solicitation packages.
7. Consideration of multifunctional solicitations (Umbrella contracts).
8. Determination of core capability requirements.
9. Preparation of local implementing directives.
10. Exploring the possible utilization of excess capacity at other Government agencies.
11. Communications with interested parties.

Phase II commences with the establishment of the Task Group and is overlayed by the cost comparison process. However, there are issues external to that process itself

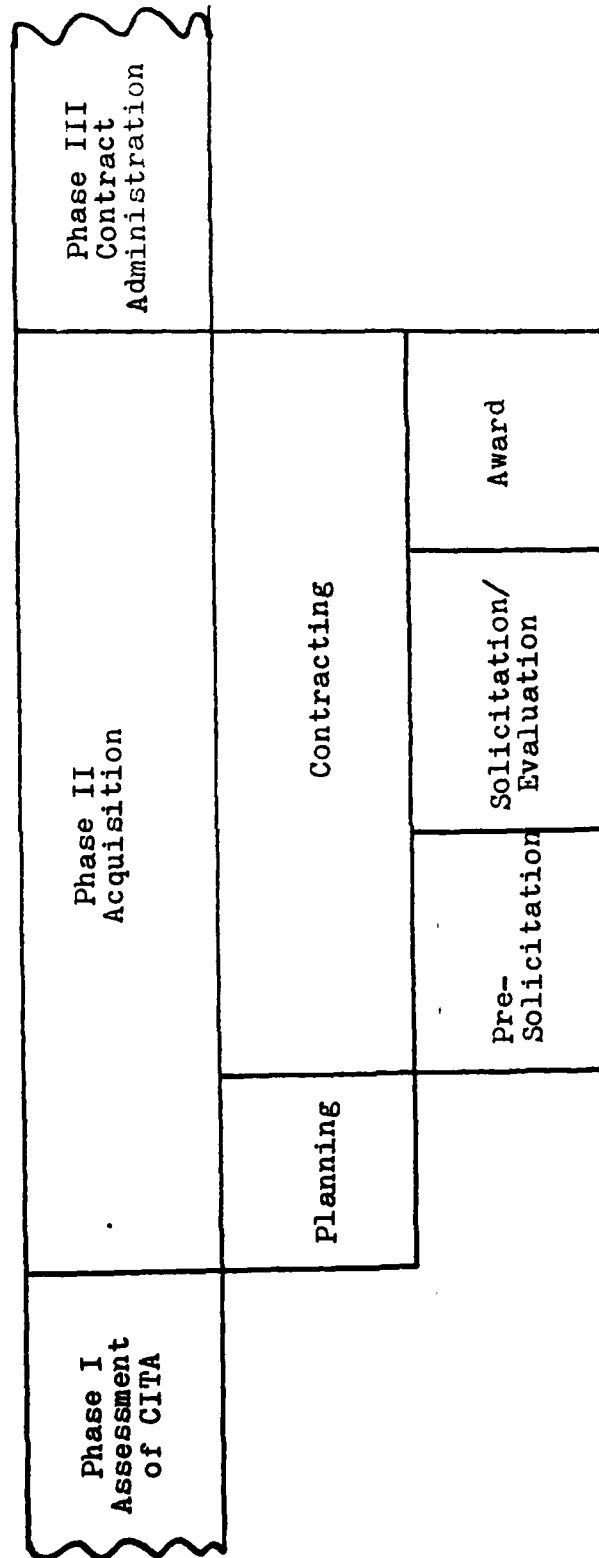


Exhibit II. CITA PROGRAM CYCLE

which will be of importance to the Contracting Officer. These involve planning and organizational considerations as opposed to the technical aspects of the job. Therefore, in the initial part of this phase some of the long-term managerial considerations need to be addressed. When the purchase request reaches the contracting office, the Contracting Officer's attention is shifted to some of the more technical aspects of the process including those normally associated with solicitation preparation, proposal evaluation, and contract award.

To complete the process, the third phase of the framework is Contract Administration. This phase commences with the award of the contract and continues as long as a commercial concern continues performance of the contract. Time and resource constraints on this study have precluded an in-depth review of the potential new issues facing the Contracting Officer in this phase. However, it has been included here to complete the overall picture and might possibly provide the background for further research.

C. ISSUE DEVELOPMENT

That services-type solicitations and contracts are generally more difficult for the Contracting Officer to grapple with than supply type contracts is generally well recognized [77]. A report on an Army study of 347 service contracts from 124 contracting activities indicated that 64 percent of the contract questionnaire responses found service contracting

to be more of a problem than supply contracting while only 10 percent felt it was less troublesome. Sixty-eight percent of the responses indicated service contract problems were of a greater magnitude while only nine percent indicated the opposite [77]. With the exception of contracting efforts for major systems, service contracting may generally be viewed as a more complex process than attempting to procure an end item. Even without the added requirements of OMB Circular A-76, it presents a challenge to the Contracting Officer.

For example, the services must be determined to be non-personal in nature to preclude illegal action of the Government in developing an employer-employee relationship with the contractor's work force. Even if the contract document is structured to preclude that from happening, actual performance after award may still lead to this undesirable situation. Additionally, most service contracts require inclusion of special clauses related to wage payments and fringe benefits as mandated by the Service Contract Act. Consideration of whether or not to use options to allow for extension of the length of service beyond the initial contract period will require the Contracting Officer's attention.

Similarly, the statement of work is likely to be somewhat longer and more complex. Since no end item may be required under the terms of the contract, other provisions must be made to measure contractor progress and performance. If work is to be accomplished on Government facilities, site

visits may be necessary to afford the contractor the opportunity to become more familiar with the work environment.

These are just a few of the many requirements involved in service-type contracts that might not normally be encountered in a supply contract.

It is not the intent of this research to explore all of these issues but only those which may be of importance to the Contracting Officer in Commercial Industrial Type Activity Support Service contracting. This was accomplished by structuring the research within the previously established framework. During interviews, personnel were asked to identify those issues which they felt were significant in CITASS Contracting because they represented potential increased responsibilities for the Contracting Officer, were not adequately covered by existing directives, required development of new methodologies, or dictated changes in existing procedures. Based on the results of these interviews and review of the literature and existing directives, the following issues were considered of sufficient importance to require further analysis. They are briefly identified below and will be developed more fully in the following chapters.

1. Phase I Assessment

In Phase I it appears that the determination of the nonavailability of commercial services in conjunction with the CITA program is a new responsibility for the Contracting Officer. His expertise may also be of benefit in development of multiple function type solicitations for one activity or

the solicitation of one function jointly for several activities. Additionally, the whole program is of such a sensitive nature that he should be aware of the procedures and restrictions about supplying information to interested persons during this phase as well as throughout the entire process.

2. Phase II Acquisition

In the Phase II planning area, the main concern seems to be with internal organizational considerations including workload impacts and staffing, training requirements, Procurement Administrative Lead Time (PALT), and contracting authority. As part of the cost comparison process, he has certain responsibilities as a member of the Task Group including inputs to the preparation of the SOW and milestone planning. Overlying all of these aspects is the genuine concern of the Contracting Officer to maintain the integrity of the overall process.

Probably the most important considerations are evident in the actual contracting process. Items which may require increased pre-solicitation review and attention include methods of solicitation, and sources of supply including the increased use of small and disadvantaged businesses. Other important considerations include DAR coverage or lack thereof and the use of appropriate clauses, determination of contract type, and the use of options.

During the solicitation and evaluation cycle, the use of pre-bid and pre-proposal conferences may demand closer attention. Methods for conducting negotiations will need to

be re-examined in light of the fact that one of the offerers will be the Government itself. The philosophies of what constitutes competition need to be addressed as well as the revised methodologies needed to evaluate contractor proposals including incentive type arrangements.

As the award cycle commences, consideration must be given to differentiating between solicitation evaluation and contract award factors. The possible late submission of the Government in-house cost estimate should be addressed along with considerations regarding the correct time to reveal the estimate to the general public. Preliminary and final announcements of the results of the cost comparison and the requirements for public review must be understood by all contracting personnel. Discrepancies resulting from verification and audit of the cost comparison may present potential problems. Lastly, an adequate understanding of the appeals versus the protest process is essential.

3. Phase III Administration

As noted earlier, this study will not provide an in-depth analysis of the Contract Administration Phase. However, many items which will be addressed in the Acquisition Phase have a direct relationship to contract administration. Included would be such items as establishment of surveillance plans, and performance standards in conjunction with the preparation of SOWs, delegation of contract administration in the preparation and award of solicitation packages, and phase-in considerations under milestone planning.

D. SUMMARY

To have a true perspective of the role of the Contracting Officer in implementation of OMB Circular No. A-76, a framework is desirable to provide the background for further issue development. The framework developed in this research effort consists of three distinct phases; Assessment, Acquisition, and Administration.

The cost comparison process, developed earlier in this chapter, is essentially encompassed by the Acquisition Phase and is the single element which most readily distinguishes CITA service contracting from other service contracting efforts.

Each phase consists of numerous activities some of which have been noted. Items of particular interest or importance to contracting professionals have been identified and will form the basis for further data analysis in the following chapters. They have been added to the previously established framework to treat them in an orderly fashion as they occur in the CITA Cycle (Exhibit III).

PHASE I ASSESSMENT OF CITA	PHASE II ACQUISITION		
	PLANNING	CONTRACTING	
ISSUES <ul style="list-style-type: none"> • NON-AVAILABILITY OF COMMERCIAL SOURCES • MULTIPLE FUNCTIONS • CONSOLIDATION OF THE SAME FUNCTION • COMMUNICATIONS WITH INTERESTED PERSONNEL 	<ul style="list-style-type: none"> • ORGANIZATIONAL/STAFFING • WORKLOAD IMPACT • PALT * • CONTRACTING AUTHORITY • TRAINING • TASK GROUP • MILESTONE PLANNING • SOW 	PRE-SOLICITATION	AWARD
		<ul style="list-style-type: none"> • DAR • CONTRACT CLAUSES • SOURCES OF SUPPLY: SET-ASIDES • SOLICITATION METHODOLOGIES • CONTRACT TYPES • OPTIONS 	<ul style="list-style-type: none"> • PRE-BID/PRE-PROPOSAL CONFERENCES • NEGOTIATIONS • COMPETITION • EVALUATION OF PROPOSALS
MILESTONES FORMATION OF TASK GROUP	PURCHASE REQUEST RECEIVED	SOLICITATION ISSUED	CONTRACT AWARDED/ SOLICITATION CANCELLED PROTESTS/ APPEALS VERIFICATION PUBLIC REVIEW ANNOUNCEMENT/ REVEALING GOVERNMENT COST ESTIMATE LATE SUBMISSION AWARD FACTORS

Exhibit III. CITA PROGRAM CYCLE MILESTONE/ISSUES

* Procurement Administrative Lead Time

IV. PHASE I ASSESSMENT OF COMMERCIAL INDUSTRIAL TYPE ACTIVITIES

Research has found that in Phase I the Contracting Officer has certain specific responsibilities and can lend his professional expertise in other related areas. He certainly has significant input regarding the determination of the availability of commercial sources to perform a specific function and can be of valuable assistance in assessing the likelihood of the success of multifunction (umbrella) type solicitations. Additionally, it is highly probable that the same function may be under review for possible conversion at several different activities for which the Contracting Officer has acquisition responsibility. Consideration might be given to combining the individual requirements into a single solicitation package encompassing all the activities. These issues are explored further below.

A. DETERMINATION OF THE AVAILABILITY OF COMMERCIAL SOURCES

During personal interviews, contracting personnel were asked what they thought their responsibilities were in determining the availability of commercial sources including the use of informational solicitations and market surveys. There was a wide divergence in the responses running all the way from the feeling that it was the functional activity's responsibility to identify sources to the statement that this was the Contracting Officer's primary responsibility under the new policy guidelines.

Many interviewees thought that there would be a significant increase in the use of informational solicitations. Prior to the latest revision of the Circular, informational solicitations were often used for determining the commercial interest in a particular function and, along with Government engineering estimates, were used to justify in-house performance either for lack of commercial source or lower in-house cost. Agency CITA directives provided procedures for the use of "Solicitations for Planning Purposes" and for submitting requests for continued in-house performance if there appeared to be a lack of private sector interest in the CITA requirement based on responses to informational solicitations [20].

Although informational solicitations may be of some use in determining private sector interest, they have distinct disadvantages. One factor is that contractors might not be willing to take the time required or incur the expense necessary to prepare proposals for information only. Additionally, those proposals submitted might not be as accurately prepared as those for which the contractor has a reasonable expectation that he might receive an award. Market surveys were also occasionally used to determine commercial interest mainly through contacts with the Small Business Administration.

One of the main problems with informational solicitations or market surveys is that they do not guarantee that all potential sources available to perform the service are aware of the Government requirement. Therefore, the new Circular

directs that before a justification can be made to retain a function in-house based on the inability of the private sector to satisfy the requirement, the agency must make the requirement known to a broad cross-section of American industry. The Circular is quite specific as to how this shall be accomplished:

As a minimum, the agency must place at least three notices of the requirements in the Commerce Business Daily over a 90-day period. In the case of urgent requirements, publication in the Commerce Business Daily can be reduced to two notices over a 30-day period. [64:6]

Efforts to identify potential sources should also include obtaining assistance from the General Services Administration (GSA), SBA, and other similar agencies. Therefore, the use of an informational solicitation alone or in conjunction with a market survey is insufficient to make a determination that no commercial source is available. It should also be noted that priced informational solicitations are unacceptable as the basis for utilizing another exception to the policy of reliance on the private sector, which is that of lower in-house cost [48].

Regarding the CBD notice, there is no requirement that the notice indicate the announcement is being made in accordance with the guidelines of the Circular pursuant to a determination that no commercial source is available to perform the function. There is also no requirement for potential contractors to in any way indicate their ability to perform the function in a satisfactory manner, only that

they are "available". Consideration has been given to requesting contractors to provide some evidence in their replies that they have the capability and qualifications necessary to satisfactorily perform the service.

Another unanswered question in the existing directives is what level of response constitutes sufficient interest to indicate that the private sector industrial base is available. Is one response enough? Perhaps three is sufficient, or maybe it should be 10. If the Circular is to be literally interpreted, the only way to justify in-house performance in this instance is if no commercial sources are available. Therefore, the availability of even one source would be sufficient to preclude the use of this exception.

Another area in which the existing directives are silent relates to who has the initial responsibility to make the determination that no commercial source is available, the Contracting Officer, or the functional activity. Since, at least in theory if not in practice, the development of sources of supply is generally the realm of the Contracting Officer, it would seem the decision should be his. As a practical matter, the use of CBD notices in determining the availability of commercial sources may not assist in the decision making process. Extensive substantiation is required to justify in-house performance based on the non-availability of commercial firms including detailed documentation that existing firms do not have sufficient capacity or technical competence. Additionally, in the case of new starts, the probability of

developing the capacity and competence must be shown to be low [60].

Most astute contractors are continually trying to enhance their existing business or expand into related areas. The probability of some commercial concerns expressing interest in DOD CITAs as a result of CBD notices is most likely quite high. The researcher observes that the advertisement of the requirement in the CBD without the simultaneous issuance of a formal solicitation could extend the overall acquisition process by as much as 90 days and may produce little additional beneficial information.

B. MULTIPLE FUNCTIONS

The Navy is committed to combining several small functions currently performed in-house into larger functional groupings. Experience indicates this facilitates contractor interest and enhances the interest of larger more experienced firms [43]. The ultimate outgrowth of this concept is the "umbrella" type contract in which a single contractor provides support for an entire base operation. This type of arrangement is also referred to as a Base Operation Support Service (BOSS) contract. In the Navy, the best example of this is perhaps the support functions at the Submarine Trident Outfitting Base in Bangor Washington. The Base Services Support Contractor (BSSC), performs almost all base service functions for it and its tenant activities, the notable exception being the purchase operation which is performed by an on-site dedicated Branch of the Procurement Department, Naval Supply Center, Puget Sound.

Literature reviews indicate there seems to be some advantages to the use of multifunctional contracts [32]. In theory, and probably in practice, the price the Government pays for the services should be less for a single contract than the total of several small contracts. Costs associated with solicitation preparation and contract administration should be reduced. The centralization of management in a single source should also assist in contract administration and enhance communications [72]. The main disadvantage is that in the event a conversion is involved, the phase-in and turnover period could be quite turbulent. Change-over and start-up functions are more difficult due to the number of personnel involved, initial communication gaps, and general coordination problems [73].

Interviews indicate the Contracting Officer could advise and assist the functional activity in the grouping of functions to enhance the likelihood that a single firm would be capable of performing all the desired services. This is particularly important if the activity is contemplating contracting-out large sub-areas of the base operations with the goal of ultimately reaching some form of total umbrella coverage. The Contracting Officer's role in this process is strictly advisory in nature, but could be of significant benefit to the functional activity. Interviewees indicated that a lack of adequate manpower resources often precludes full support of this objective.

The Contracting Officer, as well as the functional activity, may also be somewhat limited in their ability to accomplish extensive combining of similar base support functions by existing directives. The decision as to what functions are to be reviewed in a particular fiscal year has been centralized in the Office of the Chief of Naval Operations [59]. Once a function is identified for review in a specified fiscal year it is very difficult to change it to another year, especially after Congress has been advised of the inventory schedule [59].

C. CONSOLIDATION OF THE SAME FUNCTIONS

Consolidation and solicitation of the same types of functions to be performed at several different activities is, in contrast to multifunction contracting, an area where the contracting officer has perhaps more direct involvement. By standardizing and centralizing the review schedule, all field activities for which the Navy Contracting Officer has procurement responsibilities should be reviewing the same functions during the same fiscal year for possible conversion to a contract.

A possible benefit of this approach is that it permits a coordinated and concentrated development of work statements and specifications. In San Diego, for example, a number of janitorial contracts were consolidated into a single large contract. Reports indicate performance under this concept has been satisfactory [72].

However, there appears to be little attempt in the field to accomplish this objective. At one contracting office several purchase requests had been received for ADP support services from different activities including two for key punch work. The solicitation process was just commencing for the key punch services, but it was not considered feasible to combine any of the requirements. At another contracting office, mess attendants and guard services solicitations were being processed independently even though more than one purchase request for each service had been received.

Research indicates there are many reasons why this occurs, some of them beyond the immediate control of the Contracting Officer. The combining of several functions into larger packages, be it multifunctional or of the same type of work, encourages larger experienced firms to enter the competition. This runs directly counter to other policies, namely those of increased participation by small and disadvantaged businesses through the SBA or Set-aside Programs. In fact, the vast majority of solicitations reviewed were being offered up to the SBA in support of the disadvantaged business program.

Although standardized work statements are currently in effect for the three functional areas mentioned above, there appeared to be little coordination between the packages received at the contracting offices. Work statements varied from acceptable to poor. Interviews with contracting personnel indicated that there was often little similarity

between work statements submitted from different activities for the same service. This would certainly hinder the preparation of a larger solicitation encompassing several activities.

The biggest problem noted during discussions with contracting personnel is probably one of coordination. It would be ideal if the various activities for which the contracting office has procurement authority could jointly review their requirements and prepare consolidated packages for submission to the Contracting Officer. The individual functions to be reviewed for each fiscal year have been tentatively identified. With the Contracting Officer participating in or even taking the lead in the planning effort, it might be possible to coordinate an overall plan for orderly processing of various consolidated packages throughout any one fiscal year.

D. COMMUNICATIONS WITH INTERESTED GROUPS

As noted earlier, many groups including union representatives, private industrial concerns, and Congress have a vested interest in the CITA program. The Chief of Naval Operations has indicated that this is a sensitive area and Congress in particular must be kept advised of the current status of all program efforts. Additionally, there is always significant interest generated in the local area regarding the impact the program will have on the community. Requests from the news media are most probable. The Contracting Officer must insure that he makes no statements that would seem

to indicate a decision has been reached on any areas that require approval by a higher authority. If the Contracting Officer is involved in anyway in the Assessment Phase of the CITA program he must realize that the ultimate decision as to what will be included in a particular inventory cycle is not made at the local command level.

Contracting Officers may expect to receive or be requested to supply input to specific requests citing the Freedom of Information Act. One such document reviewed during the research was four pages in length and requested answers to over thirty questions [1]. It further requested that each answer be supported with extensive documentaion. Inputs to replies such as this should be prepared in close concert with legal council and advice or assistance should be sought from higher authority if necessary [54].

Replies to inquiries from union employees affected under the CITA program should be consistent, accurate and supportive of the general policy. Requests for written responses in this area should be coordinated with the Naval Supply Systems Command [54]. However, in the final analysis, replies to public inquiries remain the responsibility of the field activity [54].

E. SUMMARY

Four areas have been identified in this Chapter which may require increased attention of contracting personnel. Significantly, these activities may occur before the decision is

made to commence the cost comparison process and most certainly before receipt of the purchase request in the contracting office.

Research indicates the Contracting Officer may well be the focal point for determining the non-availability of commercial concerns to perform the desired service. Existing guidance mandates at a minimum the use of a CBD notice in this determination, but several related questions in this regard remain largely unanswered.

Participation in the development of multi-functional solicitations and consolidation into one solicitation document of the same function for different activities are two areas in which the Contracting Officer may provide assistance and professional advice. Despite some problems, there may be certain instances where he can take the lead in these endeavors.

Lastly, considerable attention from numerous special interest groups is focused on the implementation of the CITA program. This program is considered to be a sensitive one, and detailed guidance on communicating with these groups has been provided. Awareness of the content and spirit of this guidance could preclude possible command embarrassment.

V. PHASE II: ACQUISITION - PLANNING

Before commencing the formal solicitation process, the Contracting Officer should perhaps address some of the managerial aspects of implementing the new guidelines. It would be advisable to consider some of these issues well before actual receipt of the purchase request in the contracting office. These activities include possible internal considerations within the Contracting Officer's own office as well as providing assistance to the requiring activities in their attempt to develop statements of work and milestone planning. First, examination of the long-term internal organization and staffing aspects will be addressed followed by the considerations regarding the role of the Contracting Officer in the Task Group.

The Naval Material Command well recognizes the importance of long term advance planning. In its Notice of 21 December 1976 regarding the use of the firm bid/offer procedure, it was noted that the success or failure of the efforts to implement the CITA program are most dependent on timely planning efforts and the willingness of procurement personnel to make themselves available to assist requiring activities [43]. Reviews and interviews with field personnel indicated various approaches were being pursued to review their own internal resources for possible reorganization to more fully support the program.

A. ORGANIZATIONAL AND STAFFING ISSUES

To accomplish their mission, all the contracting offices visited were organized in slightly different ways. At the Naval Regional Contracting Office (NRCO), Washington, many of the services are processed in the Research and Development and General Purchase Branch. Contract administration is accomplished using the "cradle to grave" philosophy in that the contract negotiator retains responsibility for the procurement from receipt in the purchase branch through and including the Contract Administration Phase. Delegation of contract administration is generally made to one of the DCAS components, although interviews indicated that, except for renegotiating wage agreements, DCAS could provide little additional assistance in CITA contracts if any significant contract administration problems arose.

The Regional Contracting Department at the Naval Supply Center, Oakland is organized into three large customer oriented contracts branches. Service-type requests are processed by any one of three branches depending upon which customer activity submits the purchase request. Contract administration is sometimes delegated to DCAS and sometimes retained by the Procurement Contracting Officer. The cradle to grave philosophy is also followed in this office. No separate Contract Administration Branch exists at the Regional Contracting Department, Oakland.

At NRCO Long Beach, the Contracts Branch is divided into four customer oriented sections all of which are responsible

for the acquisition of the needed services for their customers. Contract progressing after award is accomplished by the Contract Performance and Termination Branch. However, if major contract administration problems are encountered, heavy reliance is placed on the original contract negotiator to become involved once again. NRCO Long Beach is the most unique of the Navy activities visited because it is the only organization which established a CITA program special coordinator. All requests, regardless of origin, which require processing under the A-76 guidelines are passed to this individual. This program was still being formalized during the research, but it appeared likely that additional personnel might be added to the project.

In contrast to the Navy activities visited, the Base Contracting Division at Travis Air Force Base makes a distinct differentiation between acquisition and contract administration and has a centralized Services Branch which processes all service requests. Upon award of the contract, the entire contract folder is passed to the Contract Administration Branch. Formal turnover procedures are well established and the contract administrator is required to establish a detailed plan for accomplishing timely contract administration. Almost no contract administration is delegated to DCAS in the area of service contracts.

During the interviews at the various Navy activities, personnel were asked whether they felt their existing staff and organizations were satisfactory to adequately implement the

CITA program. As regards staffing, most indicated they were already understaffed and not prepared to accomplish this increased effort. One activity indicated they could easily justify another three contract negotiators just to process CITA actions in addition to the 45 currently onboard. Another indicated that development of a new section or branch was not an unlikely possibility.

Of perhaps more concern was the potential impact of contract administration not only at the contracting office but at the activity that is receiving the contractor service. Increased requirements for Contracting Officer's Technical Representatives (COTRs), and Quality Assurance Evaluators (QAEs) is highly probable. One interviewee suggested that a requirement be levied on all activities which will be engaged in a significant contracting-out effort to establish a billet for a procurement series person to oversee contract administration at the activity and assist in the preparation of work statements. The requirement would be for one person for a given dollar value of contracts currently in effect. As the program grew, additional billets would be required. This concept is already in effect at the China Lake Naval Weapons Center. At China Lake, GS 1102 contracting personnel are part of the authorized billet structure and perform many contract administration functions for the PCO at NRCO Long Beach including initial review of the SOW and monitoring and progressing actions after award. Training for these personnel

generally must be accomplished by the contracting office. This itself may require an additional billet in the procurement management staff organization.

The prospects for obtaining additional personnel in the contracting office is probably not bright. Interviews with Systems Commands personnel indicate that additional ceiling points to field contracting offices have already been provided in conjunction with earlier studies on the CITA program. Increases are unlikely even though the cost comparison requires the addition of 4% to the contractors bid or offer to indicate the probable Government cost for contract administration [66]. Any additional billets that do materialize are likely to appear at the activity receiving the contract service rather than the contracting office. If forced to stay within existing manning levels, the contracting office must consider the best way to organize its limited staff to provide support and service to its customers and fulfill its contract responsibilities.

Those activities that have a dedicated Services Branch, such as at Travis Air Force Base and NRCO Washington, appear to have developed a level of technical professionalism somewhat superior to other activities reviewed in processing service contracts in general and CITA actions in particular. This is in no small part probably due to the fact that both of these activities have had more experience in this area than the other activities visited. However, this concept may not always be feasible for all contracting offices. For

example, interviews indicate that the majority and maybe as many as two-thirds of the requests processed at NSC Oakland are for services of one type or another. Since service requests provide such a large portion of the input, this presents organizational problems if attempts are made to locate them all in one branch. Additionally, Travis, under the base procurement concept has the advantage of basically supporting only one customer, while the Navy Field Contracting Office must support many different customers often geographically disbursed. By organizing in customer branches they are able to facilitate the communications process. A single contact point, the Branch Supervisor, is the focal point for all discussions with the various activities. Therefore, it would appear that the development of a dedicated Services Branch or CITA Program Branch may not be as feasible in the Navy system as it is in the Air Force.

The second consideration would be the desirability of developing a separate Contract Administration Branch. There appears to be more support for this concept, although at least one contracting office was still adamant that the cradle to grave concept was the best approach. The dissenting office indicated that continuity under the "cradle to grave" concept is enhanced, and cited the time required to become familiar with the entire acquisition process that occurred prior to receipt of the contract file as perhaps the main drawback to a dedicated administration staff. However, experience indicates that contract administration is one of

the first areas to slip if a contract negotiator is faced with a growing backlog of new purchase actions. Indications were that those activities which had no dedicated contract administration staff developed no administration or surveillance plans to monitor contractor progress or the performance of QAEs and COTRs in the field. Contrast this to the Travis Air Force Base concept which requires the scheduling and approval of pre-performance conferences, daily work plans, periodic progress meetings and similar post-award considerations [6,99]. These actions are taken to insure the Government is receiving the services it is entitled to and potential problem areas are surfaced early in the performance cycle. In two of the three Navy activities visited, a researcher review of contract folders indicated that little planning of this nature was being performed or even contemplated.

The cradle to grave concept is probably entirely satisfactory for routine supply type contracts. However, with the likely increase in service contracting under the CITA program, contracting offices may wish to give consideration to establishment of a dedicated contract administration staff to relieve the contract negotiators of the burden of contract administration. It is noted that the Air Force generally has more manpower resources than the Navy to accomplish this objective and, again, the geographical disbursement of Navy Field Activities may present a problem.

B. WORKLOAD IMPACT

It is difficult to get an adequate grasp on how much the Contracting Officer's workload may be expected to increase as a result of the new emphasis on reliance on the private sector. NRCO Long Beach had six or seven packages in-house during the review period; RCD, NSCO had five. This may not seem like a significant number in relation to the total number of packages, but it must be remembered that during the period of this review (September and October of calendar year 1979) the new program was just commencing to gather momentum. Additionally, numbers are not necessarily indicative of the time or effort that will be required to process a CITA procurement from start to finish. As far back as late 1976, the Naval Supply Systems Command (NAVSUP) recognized that the increased emphasis on the CITA program and mandated use of the firm bid/offer procedures could be expected to result in an increased workload of many complex procurement actions and would have a significant impact on the Navy Field Procurement System [49]. That was even before the current emphasis on the program after the release of the revised Circular in March of 1979. However, recent interviews with NAVSUP personnel indicate they expect little additional impact for the field activities at this time. Sufficient personnel increases were made in 1976 to accommodate the program and expected workload increases.

This may be true, but an examination of the number of functional areas considered for possible review in the FY

80-82 schedule would indicate contracting offices may experience a significant increase in the number of CITA purchase requests received. Over the next three years in excess of 115 functional categories are to be reviewed for possible conversion to contractor performance; over 45 in FY80 alone. These include some rather complex areas such as electronic and communications networks, waterfront operations, maintenance of ADP equipment, Regional Medical Center Care, and even morale, welfare and recreational activities [61]. This increase will be in addition to those designated for review in FY79 such as guard services and mess attendants, many of which were still being processed by contracting offices as of March 1980.

All of the organizations for which the Contracting Officer has procurement responsibility should theoretically be reviewing the 45 functions for possible conversion in FY80. This could indeed create a significant additional workload for contracting personnel. One contracting office visited had queried its' customers and requested input as to the probable number and type of functions they were considering submitting during FY80. As a planning aid, this would certainly seem a prudent course of action to follow.

As noted earlier, most of these contracting activities are complex and time consuming. Additionally, the Contracting Officer may expect to face additional demands on his already limited time by participation in the Task Group meetings and

providing continual progressing information to higher authority. Air Force experience has indicated that overtime work even on Saturdays and Sundays has often been necessary to meet study milestones [21].

Perhaps the most illuminating indication of the possible effect of renewed interest in reliance on the private sector has come from the Office of the Chief of Naval Operations in a message reviewing the overall status of the C/I program. The message stated:

It is apparent that the Navy is on the verge of a virtual explosion of effort at all levels of command to implement this program. It is possible that the full impact of this workload has not yet been understood...The workload on the several Naval Contracting Agencies themselves will be significant. [62:2]

C. PROCUREMENT ADMINISTRATIVE LEAD TIME

One of the measures of the effectiveness of an activity in the NFPS is the Procurement Administrative Lead Time (PALT) which is generally defined as the time it takes to process a purchase request from receipt in the contracting office until award of the contract [47]. Formal time standards have been established to process and complete an individual purchase request. For those actions in excess of \$10,000 which must be placed under contract rather than using Simplified Purchase methods, the goal is 60 days [47].

Review of existing solicitations and contract folders at the various activities visited indicated that achievement of this objective will be virtually impossible in the area

of C/I Support Source contracting. Two representative examples will illustrate this point.

A purchase request was received at one activity for Audiovisual Services on 11 December 1978. Two-Step Formal Advertising (FAD) was the solicitation method to be utilized. A contract was awarded on 29 June 1979, 169 days later. In this case the choice of Two-Step Formal Advertising necessitated additional time, but it took from 11 December 1978 to 13 February 1979, a total of 64 days, to develop the SOW and related paperwork into a usable package for solicitation purposes [5]. In another case, a solicitation for Guard Services was forwarded to the contracting office on 15 June 1979. The solicitation method in this case was negotiation with the Small Business Administration through the use of an 8(a) set-aside for minority and disadvantaged businesses. The SOW subsequently required extensive rework effort. The cost comparison was conducted on 25 January 1980, a total of 224 days after initial submission [70]. In this case, interviewees indicated the rework of the SOW and negotiations with the SBA, including submission of cost and pricing data, contributed to the delay. The Government cost estimate was lower than that offered by the private sector and, therefore, as will be explained later, the requirement should be re-solicited using Small Business Restricted Advertising or unrestricted methods. In this particular case, over seven months have elapsed and the process is still not complete.

These two examples, although perhaps extreme, are in fact representative of the time frames required in the contracting process. Several additional solicitations reviewed during September 1979 at various activities had not been awarded or cancelled as of the beginning of March 1980.

Many of the extensions found during this research occurred after the release of the solicitation due to problems discovered at pre-award conferences or during discussions in negotiated procurements. Even after the cost comparison is conducted, problems such as delay in the certification audit or with the approval process could delay the actual award of the contract. Delays in the approval process such as occurred in FY78 because of the temporary ban on contracting-out by Congress created significant problems for Contracting Officers. Offerers indicated the loss of key personnel proposed to perform the work was entirely likely if award was held up any significant length of time. In some instances the acceptance period for offers of 60 days expired. Although offerers did extend their acceptance period, they were under no legal obligation to do so. Faced with the loss of key personnel, prospective contractors might well be expected to withdraw their bids or proposals.

Interviewees indicated the desirability of getting contractors to offer a longer acceptance period, perhaps 75 to 90 days. Close adherence to milestones in cases where a cost comparison will be required and personal monitoring by

the Contracting Officer would seem to be essential to avoid having these types of actions adversely affect PALT.

D. CONTRACTING AUTHORITY

Early in the development of the CITA program there was a question as to who in the Navy should be providing the contracting expertise for various functional categories; the Naval Supply Systems Command or the Naval Facilities Engineering Command (NAVFAC). Many of the early contracting efforts centered on those associated with the Public Works Department which indicated NAVFAC responsibility. But as the program gained impetus, many additional functions have been identified which are clearly outside of the maintenance and repair type functions normally performed by Public Works personnel. Of the 119 functions considered for review in FY 80-82, it appears that three will be excluded from the cost comparison process for reasons other than lower cost. Of the remaining functions, 79 were identified for action by NAVSUP, 22 for NAVFAC action, and the remaining 15 will be decided on a case-by-case basis [52]. In the case of multi-function contracting, the concept of predominant user will determine who will procure the needed service [52].

NAVSUP was to issue a listing to NFPS activities indicating those functions for which they would have procurement responsibility. During a recent follow-up interview at one field activity, there was apparently still some problem in this area in at least one functional category. The contracting

office had recently completed a cost comparison for Guard Services on an 8(a) set-aside. The Government cost estimate was lower, therefore the activity was preparing to resolicit using Small Business Restricted Advertising, procedures in accordance with existing guidelines. However, the resolicitation was not being processed pending a review of the possibility it might be released by a NAVFAC contracting office.

E. TRAINING

Discussions with field contracting personnel at activities which have had little prior experience with contracting under the procedures mandated by the latest A-76 circular indicated that a real need exists to familiarize contracting personnel with the technical details of this type of contracting effort. An overview of the cost comparison process at a minimum is necessary for a contract negotiator to perform his or her job in a professional manner.

Very few personnel were able to answer questions posed about the methodologies involved in evaluating cost type proposals or incentive arrangements. For example, at one activity when asked what methods would be used to evaluate cost-plus-award-fee proposals to compare them to in-house cost estimates, the director indicated it should be at minimum levels of possible performance, while the deputy director indicated it should be at the maximum. Actually, as will be discussed later, both answers are incorrect.

Another area where confusion exists relates to the use of options and whether the cost comparison process will be based on a one year or a three year period. Similarly, some negotiators were not sure when the cost comparison process would be complete. There was also some confusion as to how "bid opening" procedures and public announcements would be handled for negotiated solicitations.

There is at least one formal training course available for contracting personnel in A-76 procedures currently being offered. It is a four day course conducted by the Army Logistics Management Center and includes a two hour Executive Overview of the C/I Program for Commanding Officers. The sponsoring activity is the Office of Secretary of Defense Program Manager for C/I Activities.

Contracting personnel who have taken the course indicated that although it was beneficial in some respects, it is mainly oriented to financial management personnel who will be involved in the development of Government cost estimates and actually performing the cost comparison--areas from which the Contracting Officer should be specifically excluded. It does, however, address the role of the Contracting Officer in the Task Group and does explain the overall cost comparison process; so, from that standpoint it may be of some benefit.

More appropriate would be a dedicated in-house program based on the current guidance [44,48,64,66]. However, evidence indicated this was not being accomplished to any great degree at any of the contracting offices visited.

F. TASK GROUP

After looking at some of his potential internal management problems, the Contracting Officer should next assess his level of involvement in the Task Group. It is the responsibility of the Task Group to initiate the actual cost comparison process and through continual monitoring and progressing actions, drive the process to a satisfactory completion.

The initial composition of the Task Group usually includes representatives from the functional or operational organization, the Manpower/Personnel Office, the Finance/Accounting Office, the Legal Office and the Contracting Office. The Task Group chairperson could be from the functional organization but on most occasions in the Navy the Comptroller or Planning Officer has been designated as the group leader. In the Air Force the chairperson is always from the Manpower Office [23].

The Task Group members must establish realistic milestones and strive to meet these deadlines. Initially, their main efforts will be directed to preparation of a comprehensive Statement of Work. Once that milestone is met, their attention turns to the development of an accurate Government cost estimate to perform the function in-house. Representatives of this group will then conduct the cost comparison once private sector bids or offers have been received and evaluated by the Contracting Officer. When the cost comparison is completed, their final efforts are directed to

preparation of the Decision Summary Recommendations for review by the Approving Authority. The success or failure of the entire process is based on early communications, detailed planning, and the diligence with which the Task Group actually steers the effort [27]. The primary responsibilities of the Task Group members are generally as indicated below:

1. Task Group chairperson:

Chairs all meetings.

Oversees preparation of the in-house Government cost estimate.

Maintains the objectivity and integrity of the system.

Establishes and monitors attainment of milestones.

Provides guidance on preparation of SOW.

Attends pre-bid/pre-proposal conferences.

Prepares and forwards Decision Summary Recommendation.

2. Manpower/Personnel Office:

Notifies labor/union representatives of the study.

Identifies Government positions affected by study.

Prepares possible Reduction in Force plans.

Takes action to assist displaced Government employees including possible hiring by contractor.

3. Functional Office:

Develops and prepares the Statement of Work.

Identifies Government Furnished Material (GFM) to be provided to contractor.

Develops the Quality Assurance Surveillance Plan.

4. Comptroller/Financial Office:

Prepares Government Cost Estimate.

Conducts Cost Comparison.

5. Legal Office:

Reviews SOW and solicitation for legal sufficiency.

Assists in responses to request under the Freedom
of Information Act.

6. Contracting Office: [48]

Assures contracting milestones are met.

Reviews work specifications.

Solicites bids/offers from private industry.

Conducts pre-bid or proposal conferences.

In conjunction with the requiring activity, explains
cost procedures.

Presides at bid openings and determines successful
responsive/responsible bids or acceptable/responsible
offers.

Awards contracts.

Notifies in writing the appropriate activity officials
when a contract is actually awarded.

Interviews with Navy contracting personnel generally, although not always, indicated a reluctance to become deeply involved in the Task Group planning efforts. Citing the difficulties presented by the geographical disbursement of the requiring organizations, a lack of resources, and a concern that they would be writing most of the SOWs, they often felt their input

should be minimal. This attitude is not uncommon. The Air Force with all its experience in the use of the firm/bid procedure indicates that the hesitancy of the contracting office to get involved in any great depth is a continuing problem [21].

If the contracting office is not prepared to get significantly involved, at least initially in the development of specifications and the planning aspects of the Task Group, the result may well be poorly prepared work statements unsuitable for solicitation purposes and shallow, ill-defined contracting milestones. Additionally, the Contracting Officer has a vested interest in the maintenance of the overall integrity of the competitive bidding system. Therefore his professional experience may be of significant benefit to the Task Group efforts in three areas in particular; milestone planning, preparation of the SOW, and maintaining the integrity of the system. These issues are explored further below.

G. MILESTONE PLANNING

Before examining the Contracting Officer's input to milestone planning, it may be beneficial to review the milestones for the overall process to get a better perspective of how long the entire cycle can take. For this analysis it will be assumed that the schedule of functions to be reviewed for any particular year has already been established. The milestones in Exhibit IV are those actually established by one activity visited during the research effort in support

<u>MILESTONE</u>	<u>DATE PLAN</u>	<u>SET- ASIDE</u>	<u>UNRESTRICTED NEGOTIATION</u>
Fact Sheet Submitted	6-12-79	1- 2-80	3- 7-80
Feasibility Study (Fact Sheet, Approved)	7-15-79	2- 1-80	4- 7-80
Statement of Work Prepared	8-15-79		
SUP Functional Manager Review	8-30-79		
Work Statement to Contracting Officer	9- 7-79		
In House Estimate Prepared	9-14-79		
In House Estimate Audited	10-15-79		
Begin RIF* Preparation	10-29-79		
Release Solicitation	9-27-79	1- 2-80	3- 7-80
Receive Proposals/Offers	11-27-79	2- 1-80	4- 7-80
Adjust Bid/In House Costs for Comparability; Audit; Decide	12-12-79	2-15-80	4-21-80
(If bid exceeds in house costs, solicitation will proceed sequentially from here through unrestricted negotiation until most economical performance is determined)			
In House Estimate to Labor Union	12-20-79	2-16-80	5- 5-80
Message to CNO	12-27-79	2-25-80	5-13-80
Award Contract/ Cancel Solicitation	1- 4-80	3- 3-80	5-20-80
RIF Issued	1- 4-80	3- 3-80	5-20-80
Contract Commence	2- 4-80	4- 3-80	6-20-80
RIF Complete	4- 8-80	6- 5-80	8-20-80

EXHIBIT IV. TYPICAL MILESTONE DEVELOPMENT

* Reduction in Force

of the possible conversion of the Guard Services function to performance by a private concern. As will be explained later, the milestones need to be adjusted to the extent that an unrestricted solicitation would not be required if a set-aside procedure resulted in lower in-house cost to perform the service. Although the "Adjust Bid/In House Costs for Comparability; Audit; Decide" is a somewhat confusing and ill-defined milestone, the point of including the milestone planning document here is to indicate that the entire process may take several months. This is not unrepresentative of other milestone plans observed during the research.

In another instance cited earlier under the issue of PALT, it was pointed out that almost six months transpired between receipt of the package in the contracting office and accomplishment of the cost comparison. Much of this delay was due to the difficulty of negotiating with the Small Business Administration and obtaining timely submission of required cost and pricing data. This example points out some issues the Contracting Officer may wish to assess in providing input to milestone planning.

Perhaps the most important consideration is the method of solicitation required. Any type of formally advertised procedure including the use of small business restricted advertising might be expected to be the quickest method. This is expected because the solicitation methodology does not require the submission and evaluation of technical proposals

or cost and pricing data. The use of Two-Step Formal Advertising will necessitate submission and evaluation of technical proposals prior to priced bids which will tend to lengthen the procurement process. Negotiation techniques including the use of 8(a) set-asides will most likely require the submission of cost and pricing data. The time necessary to audit the cost data and negotiate a fair and reasonable price may make this process longer than either formal advertising or Two-Step Formal Advertising. Interviews with field contracting personnel indicate the use of 8(a) set-aside and negotiated procurements is generally the longest process of all solicitation methods.

Although not indicated in Exhibit IV, it may also be necessary to conduct a pre-award survey or obtain security or Equal Employment Opportunity clearances prior to award of the contract. Interviews with personnel at Travis Air Force Base indicated the obtainment of security clearances for contractors to work on the base was one of the biggest problems holding up contract award and subsequent contractor performance. Security clearances often took as long as 60 days to obtain and even interim clearances required 30 days processing time.

Experience indicates that once the purchase request is received in the contracting office, Contracting Officers are expected to adhere to proposed milestones. Therefore, it is to the Contracting Officer's advantage to carefully analyze

his input to milestone planning to ensure he can perform in accordance with the resulting schedule. Perhaps the key ingredient to successful adherence to milestones in addition to sound planning, is the condition of the statement of work when it is received in the purchase office. That issue is addressed in the following section.

H. STATEMENT OF WORK

The importance of an accurate, performance-oriented statement of work cannot be over emphasized. The responsibility to determine that the SOW is adequate and appropriate for contract specifications is solely that of the Contracting Officer's [49,66]. Circular A-76 indicates that one of the common ground rules for the cost comparison process is that the SOW must be written around the same scope of work and same level of performance regardless of who performs the work, the Government or the contractor. The work statement must be sufficiently precise to avoid misinterpretation by the contractor with performance standards that can be monitored for either in-house or contract performance [64].

It should clearly indicate what is to be done without describing how to do it, and should provide methods of evaluating performance. The SOW should describe all duties, tasks, responsibilities, and requirements for furnishing facilities and materials. If the workload is variable, estimates will be made on available historical data along with a best estimate of future requirements. Maximum use should be made of

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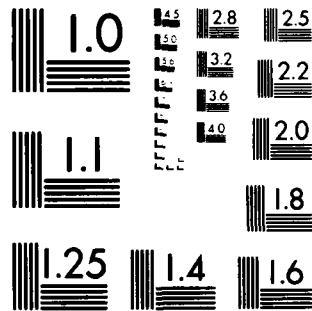
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contractor facilities. If necessary, Government furnished facilities, materials, and equipment should be clearly identified.

Additionally, the recent requirements for the Commanding Officer to certify that the cost comparison process will be based on the most efficient organization for in-house operation is a significant development [16,69]. No longer will the submission of SOWs based on existing position descriptions, for example, necessarily provide an adequate basis for the cost comparison process [69].

The question arises as to what the real involvement of the Contracting Officer should be in the preparation of SOW. Many contracting personnel interviewed indicated that a need exists for their increased participation early in the development of the SOW. NAVSUP stated that this is an area which requires additional Contracting Officer effort in a recent letter to all Navy field activities which stated in part:

Regional Contracting Departments should take the initiative to contact C/I Managers...to partake in the C/I planning effort and assist in the development of work statements and requests as feasible. [51:1]

That this need is genuine is confirmed by the results of this research. At one activity, an interviewee indicated that the SOW used in the solicitation for a C/I activity subsequently won by a private contractor was so poorly prepared that despite continuing poor performance by the contractor, it was virtually impossible to take any action against him. At another activity, issuance of a solicitation was delayed

after receipt of the purchase request in the contract office for over 45 days while almost 50 changes were made to the original SOW. The "milestone clock" in this case was running on the Contracting Officer's time.

Other typical comments indicated the SOW was often ambiguous, did not really reflect the work currently being accomplished or the most efficient method of organization to accomplish the task, and in the end the Contracting Officer was forced to rewrite the SOW to make it usable in the solicitation process.

Reviews by the researcher of contract folders at some activities indicated that there were usually no definitive performance standards established and no surveillance plan for monitoring contractor performance. Since the Contracting Officer must ultimately work with these documents, it would appear that this early involvement in the development of the SOW would pay off immeasurably.

Although most Contracting Officers cannot be expected to attend all Task Group meetings for the various geographically disbursed activities they support, attendance at the initial planning meetings might be feasible and beneficial, especially if some type of coordinated plan to review all activities is established. For example, at an initial meeting the Contracting Officer could review the existing materials available to assist the activity in their preparation effort. This research effort indicated that literature sources such as,

USAF Regulation entitled Base Level Service Contracts [75]; "Service Contracts, How to Write and Administer Them" by Major Kenneth L. Gerken, USAF [74]; and Army Logistics Management Center publication entitled Writing Service Contracts Work Statements, [76], were particularly helpful.

Functional activity personnel should be made aware of the existence of centralized SOWs for many functional areas currently being compiled by the Chief of Naval Material and the ad hoc DOD Service Contract Group (SCG) under the Office of the Assistant Secretary of Defense (MRA&L).

More and more outlines and detailed centralized specifications are being prepared daily which can be of significant value to functional personnel. Common deficiencies encountered in specification preparation were included as Enclosure (6) to Reference 51 and should be provided to the activity.

The Contracting Officer should emphasize the fact that the preparation of the SOW and the surveillance plan go hand-in-hand. Desired performance levels, methods of assessing performance, and criteria to determine acceptable or deficient performance, are key ingredients of any well prepared Statement of Work. Unfortunately, research and interviews indicated very little contact with functional activities early in the development stage of the SOW by Navy contracting offices. This could be contributing to the generally poor quality of the SOWs reviewed during this study.

I. INTEGRITY OF THE SYSTEM

One of the basic objectives of the revised Circular and the accompanying Cost Comparison Handbook is to Provide for equitable and consistent treatment of all interested persons, groups, and organizations. Most personnel interviewed thought maintenance of the overall integrity of the competitive bidding system should be one of the primary objectives of the Task Group. As most contracting personnel already know, even the appearance of possible compromise can lead to severe criticism of the process.

Personnel involved in the contracting process itself as well as those involved in the evaluation of contractor proposals should, under no circumstances, have access to the Government in-house cost estimate until the most favorable offer to the Government has been determined [44]. This would seem to be self-evident, but research indicated that on at least one occasion, this precept was violated. In this particular instance, a cost comparison was being conducted on an 8(a) set-aside procurement. In attendance were two representatives from the functional activity and four or five from the contracting office, including the Director and Deputy Director. Since this was a negotiated solicitation a public-bid-opening was not being conducted. When the cost comparison was completed the Government in-house estimate was lower than that submitted by the 8(a) contractor. Therefore, in accordance with existing guidelines, the requirement must now be resolicited using small business set-aside as unrestricted

solicitation methods [58]. At least five representatives of the contracting office now know the Government estimate and the most favorable offer to the Government may not have yet been determined.

This example is not provided to criticize the contracting office, but to emphasize that procedures to be followed in 8(a) and negotiated procurements are not well-defined. One interviewee indicated SBA feels bids are rigged against 8(a) contractors. This subject will come up again in later analysis. Additionally, during this cost comparison process the Government made adjustments to its in-house estimate after receipt of the sealed estimate in the contracting office and after best and final negotiations were completed with the 8(a) offerer. Justification for this type of action might be difficult to provide during an audit review.

The danger of compromise to the process grows in proportion to the number of personnel who have access to the Government in-house cost estimate. Reference 44 emphasizes the importance of safeguarding and maintaining the integrity of the cost data. The Air Force requires all personnel in the Task Group to review and sign the Standards of Conduct Statement in accordance with DOD Directive 5500.7. Additionally, the Task Group Chairperson is responsible for advising members of the utmost importance of maintaining integrity and objectivity throughout the process and establishing procedures to assure this is accomplished [23]. Interviews revealed similar measures would be appropriate in the

case of Navy procurements. It may be incumbent upon the Contracting Officer to assist the Task Group Chairperson or take the initiative himself to see this is accomplished.

J. SUMMARY

In addition to the technical contracting aspects related to the Commercial Industrial Type Activities Program, there are certain management and planning issues which may be of significance to contracting personnel. These issues may be more numerous and of greater long-term importance than those addressed elsewhere in this report. If the program continues to grow and gain impetus, organizational and staffing structures may need to be reviewed to assure the best possible support for expanding requirements. Indications are that workload may be expected to increase, and due to the complexity of the procurements, extended Procurement Administrative Lead Time may be unavoidable.

The decision as to whether Navy Field Procurement Offices or Naval Facilities Engineering Commands will process specific functional categories is being reviewed, but there may be some problem areas yet unresolved in this regard.

Interviews and observations of this researcher reveal that contracting personnel would benefit from increased local training in the cost comparison process and that material to assist in this effort is available.

Although geographical separation of activities in the Navy hampers the continual participation of the field Contracting

Officer at Task Group meetings, his initial input to milestone planning and development of acceptable work statements has been encouraged by higher authority. Noting that one of the basic objectives of the Circular is to assure equitable and consistent application of the cost comparison process, the Air Force has taken certain actions to enhance the maintenance of the integrity of the overall process. Interviews indicate similar requirements may be desirable for use in the Navy.

VI. PHASE II: ACQUISITION - CONTRACTING

A. PRE-SOLICITATION CYCLE

With the planning subphase completed, the Contracting Officer should hopefully receive an adequate purchase request which can then be developed into a workable solicitation document. The contract negotiator will now become involved in some of the more technical aspects of the process. Initially the efforts will be directed to pre-solicitation considerations including solicitation content, appropriate clause selection, methods of solicitation, possible sources of supply, contract type, and considerations of the use of options. Normally, he would turn to the Defense Acquisition Regulations for assistance in this endeavor but as will be shown, there currently is a dearth of guidance in this publication regarding detailed procedures to be followed in CITA service contracting.

1. Defense Acquisition Regulation/Contract Clauses

Even excluding the requirements imposed by OMB Circular No. A-76 and the CITA program, the experience of this researcher indicates DAR guidance on service contracting in general is not easy to locate. This observation has also been noted in other research efforts [72]. Coverage is spread piece-meal throughout the regulation. Section I includes information particularly applicable to buy-ins, options, multiyear procurement, award criteria, and other

related matters which would be of interest to the Contracting Officer in service contracting. Section VI addresses the Service Contract Act of 1965 and Section XIV deals with non-conforming services and supplies. At least one report notes the inefficiency of application as a result of not distinguishing between supply and service contracts in Section XIV [55]. Section XV deals with personal service cost principles and Section XXII discusses in some depth the distinction between non-personal and personal service contracts. One study indicates that approximately one percent of the DAR is devoted to service contracts and also notes that the DAR Council has recognized for some time the desirability of preparing separate coverage for service contracts [55].

But even more of a problem will be encountered if the contract negotiator attempts to find specific coverage of, for example, the firm/bid rule. There is none. Research indicates this has led to the proliferation of a number of clauses among various DOD agencies and even with the same agencies at different field and base activities. For example, the researcher noted at least six different variations of the cost comparison clause in directives, solicitations, and contracts reviewed in the field.

Clause usage for NFPS officers relating to the cost comparison process is contained in NAVSUP instructions, but for various reasons, even these clauses have on occasion been modified [48]. Since the clauses are of particular importance

in any analysis of the use of the firm/bid offer rule, they are reproduced below. The clause, used in Formally Advertised Procurements, was obtained directly from Reference 48 and a review of the solicitations and contracts in the field indicates it is still in common use. The clause for negotiated procurements is somewhat more troublesome and variations from the specified clause are common. Therefore, a clause from a solicitation recently reviewed in the research effort will be used [70]. It is representative of those encountered throughout this research.

FOR FORMALLY ADVERTISED SOLICITATIONS:

NOTICE OF COST COMPARISON

Bidders are placed on notice that this solicitation is subject to a Government cost comparison to determine the economical feasibility of accomplishing the specified workload in-house or by contract. Contractors who submit a bid and the labor union which is the exclusive representative of the employees concerned, will be provided the in-house cost estimate for their review at bid opening or as soon as practicable. Other interested parties will also be provided a copy upon request.

The government's in-house cost estimate will be compared with the bid of the low responsive and responsible bidder, as determined by the contracting officer. If the total contractor cost is lower than the government's in-house cost estimate, a contract will be made if otherwise appropriate. However, a contract award will not be made for at least five workdays after bid opening to allow for review of the in-house cost estimate. If the in-house cost estimate is lower than the low responsive and responsible bidder, the workload will be accomplished in-house. A copy of the completed cost comparison will be made available after contract award or cancellation of the solicitation, as appropriate.

It should be noted that the government cost comparison is based on a three-year cost estimate. That is, if the contractor's bid is for only one year, it will be straightlined for the 2nd and 3rd year. The appropriate government costs (such as personnel cost) will also be straightlined, and only

those items of cost for which known changes will occur (excluding inflation) will be adjusted for the 2nd and 3rd year. This three-year cost comparison methodology is solely for the purpose of averaging out the atypical first year costs that are normally associated with conversions of one form of manpower to another.

Activities are encouraged to contract for three-year periods but if the contract is to be for less than three years, bidders or offerers are to be advised that the three-year period is for evaluation purposes only and does not represent binding bids or offers.

FOR NEGOTIATED SOLICITATIONS:

NOTICE OF COST COMPARISON

Offerers are placed on notice that this solicitation is subject to a Government cost comparison to determine the economic feasibility of accomplishing the specified work in-house or by contract.

The Government's in-house cost estimate, based upon the work statement set forth in this solicitation, shall be submitted to the contracting officer in a sealed envelope prior to the closing time for receipt of priced proposals. At the conclusion of the negotiation process and after the most favorable offer has been determined, the contracting officer will set a time and place for the public opening of the Government's in-house cost estimate and provide appropriate notification. At this time, the contracting officer or his representative will open and record the in-house cost estimate. However, no information relating to any contractor proposed prices will be provided. Interested parties will be provided a copy of the in-house cost estimate upon request.

For the purpose of subparagraph (e) of the solicitation provision, "Late Proposals, Modifications of Proposals, and Withdrawals of Proposals", the in-house cost estimate shall be considered a proposal.

Contract award shall not be made for at least five (5) work days after the time specified for opening of the in-house cost estimate to allow for review of the worksheet cost elements. Any appeals regarding the cost comparison data shall be submitted in writing to the contracting officer within the five day work period after opening of the in-house cost estimate. No action shall be taken to complete the cost study until the appeal decision is issued. Upon validation of the worksheet cost elements, and completion of necessary

supplemental calculations, such as taxes and contract administration costs, the cost comparison will be completed. This cost comparison will be based on projections for a 3* year period. If the most favorable offer results in a total contracting-out cost lower than the Government's in-house cost estimate, a contract may be awarded if otherwise appropriate. If the in-house cost estimate is low, the solicitation shall be cancelled. All offerers will be notified of the final determination. Copies of the completed cost comparison will be made available upon request.

* Contract negotiator inserts 1, 2, or 3, as appropriate.

The Circular also requires the inclusion of other clauses and provision relating to equal employment opportunity provisions, veterans preference and minimum wages and fringe benefits including OFPP Policy Letter No. 78-2 relating to "wage busting" that would normally be included in most service contracts [63]. It also requires a clause be included to require the contractor to give employees displaced as a result of conversion to a contract, the right of refusal for employment openings for which they may also be qualified.

Additionally, activities have developed numerous local clauses relating to the possible conversion to contract including:

A clause which requires the contractor to cooperate with any successor contractor or the Government in any turnover and phase-in operations [5].

A clause which requires the contractor to develop a strike contingency plan for review and approval by the Government [5].

A reduction in contract price for nonavailability of operational assets or substandard performance in

conjunction with the Inspection of Services Clause [45].

A locally prepared "unbalanced bid" evaluation clause under which the contracting officer may declare a bid non-responsive if a buy-in appears likely [45].

A clause requiring the contractor to use the same number of personnel in performance of the contract as proposed in Step One of Two-Step Formal Advertising [45].

The legality and enforceability of some of these clauses is perhaps questionable, but in the absence of specific DAR coverage, many Contracting Officers are taking the action they feel is appropriate to insure the equity of the system and to protect Government interests.

2. Sources of Supply: Set-asides

Circular guidelines and current DOD and Navy directives encourage the use of small and disadvantaged businesses in the acquisition of services in support of the CITA program. Research has shown that most Contracting Officers are highly cognizant of this requirement and have placed great emphasis on supporting this policy. However, there are issues created by adherence to this policy which must be addressed, particularly as they relate to Section 8(a) procedures.

Interviews indicated negotiations with the SBA can be complex, time consuming, and may adversely affect the meeting of previously established milestones. Apparently

SBA representatives are not always familiar with the requirements imposed by the firm/bid rule. In one instance, a contract negotiator indicated the SBA representative demanded the Government in-house cost estimate be provided for his review during the negotiation process. This matter was only resolved by referring it to higher authority. Additionally, the SBA representative wanted to attend the "bid-opening" to review the Government estimate. It was difficult to convince him that was not possible since in the event the Government in-house estimate was low, resolicitation would be required and the Government estimate should not be revealed.

Actually, early in the development of contracting-out, NAVMAT did not think the use of the firm/bid offer procedure was feasible under Section 8(a) procedures [57]. Citing DAR paragraph 1-705.5 which provides that the use of an 8(a) set-aside does not necessarily constitute an award at the lowest price possible but only most likely costs under competitive conditions, NAVMAT indicated that the firm/bid offer should not be applicable in this instance [57]. Additionally, there was the problem of whether or not to include SBA business development expense money used by the contractor in the cost comparison.

Similarly, some confusion existed as to whether 8(a) set-asides should be used simultaneously with other forms of competitive procurement such as small business set-asides or unrestricted solicitations. This issue was resolved when the Office of the Assistant Secretary of the Navy (MRA&L)

indicated that competitive offers using only the firm/bid rule should not be solicited at the same time as those requested from SBA under Section 8(a) procedures [56]. Current guidance is that C/I actions in excess of \$100,000 will be offered up for 8(a) and small business set-asides and firm/bid procedures will apply. SBA development monies will not be included in the cost comparison.

The next question that arose was, if requirements were offered up for some type of set-aside, when would the cost comparison process be considered complete and the Government in-house estimate revealed? As recently as August of 1979, confusion still existed in this regard. OFPP was indicating that the cost comparison based on Small Business Restricted Advertising satisfied the cost comparison requirement. However, a DOD sponsored workshop was indicating unrestricted solicitations would still be required if set-aside procedures resulted in lower in-house costs [46]. It was noted during the interviews that some contract negotiators were also unable to answer this question.

On August 1979, CNM provided definitive guidance by indicating that requirements processed under 8(a) procedures would require further solicitation under either Small Business Restricted Advertising or unrestricted solicitation if the in-house cost estimate was lower than the offer made by the 8(a) contractor. However, solicitations offered originally under competitive small business set-aside procedures would not require further solicitation if the Government in-house cost estimate was lower [58].

In the case of an 8(a) set-aside, the Government estimate will be opened but not made public unless the cost comparison indicates the 8(a) offer is lower. Although the message required the Contracting Officer to advise the SBA, the 8(a) offerer, and union representatives of this procedure, at least two solicitations reviewed after the date of this message used the standard negotiation clause included earlier in this report. The clause indicates at the time of opening the Contracting Officer will record the in-house cost and provide a copy of the in-house cost estimate to interested parties upon request. The use of this clause appears to be inconsistent with the latest CNM guidance noted above.

The different treatment to be afforded Section 8(a) solicitations is not addressed in any of the current OFPP, Navy, or DOD directives reviewed during the research, including the proposed draft revision to DOD instruction 4100.33.

3. Solicitation Methodologies and Contract Types

All the solicitations and contracts reviewed during this research were either negotiated pursuant to Section 8(a) of the Small Business Act, utilized restricted small business advertising, or competed using Two-Step Formal Advertising. Any of the methods may be appropriate under different circumstances, but the use of Two-Step Formal Advertising did create a problem for one activity. Actually the problem developed after award but related directly to step one of the Two-Step process.

In this case, a contractor refused to provide the minimum manning levels indicated in his technical proposal submitted in step one of the process. He had won the award based on a firm/bid cost comparison with in-house performance conducted in step two. The Contracting Officer subsequently withheld payment of portions of the contractor's invoices citing "The Inspection of Services Clause" as his authority for this action. This was done even though the activities receiving the service indicated performance was acceptable at the current manning level being used by the contractor. Whether or not the contractor must man to the levels proposed in his offer is an issue that would most likely be decided in court.

However, the issue here is whether the two-step process should have been used in this particular case at all. The researcher noted upon reviewing the contract that the work specifications were indeed lengthy and detailed; but, since the Government was currently performing the function in-house, it would seem the requirements could be clearly indicated in a performance oriented SOW and formally advertised. The issue of minimum manning levels would then have never occurred. Deductions for inferior performance (which was not the case in this example) could be based on the established performance standards and the surveillance plan. Requesting contractor technical proposals should not be used as a crutch to offset the lack of clear and accurate specifications regarding performance of the desired service.

Another case reviewed during the research concerned the use of incentive type contracts for conversions of in-house fire fighting and security services to contractor performance. The use of an incentive type pricing arrangement necessitates the use of one of the 17 exceptions to Formal Advertising cited in DAR. As the Contracting Officer noted in his reply to the activity making the request, it would be difficult to justify a determination that negotiated procurement was necessary because it would be less costly than other methods or it was impractical to secure supplies or services of the kind or quality required without the use of this type of contract [39].

The need for the Two-Step Formally Advertised or negotiated procurements may well be a valid requirement, but interviews with OFPP and other Systems Command representatives indicate this would be more applicable to large, complex, new starts such as umbrella contracts for new base support contracts than for individual conversions.

4. Options and the Cost Comparison

In considering desirable changes to be incorporated into the revised Circular No. A-76 issued in March of 1979, one of the main issues was the use of prepriced options to prevent potential buy-ins and provide a broader period, say three years, on which to base the cost comparison between in-house and contractor performance.

The potential buy-in is not a problem that is unique to the procurement of supplies and services under the policies

of Circular A-76. It can be a problem in any procurement action. However, in this case a buy-in could result in the premature separation of civil service personnel with the associated problems and personal hardships that might follow. Since a buy-in is not per se illegal, and performance at a below cost basis is not legal grounds to withhold an award, we are looking at, for lack of a better word, a moral or ethical problem. The pressures on the Contracting Officer should this situation occur could be considerable.

The revised Circular attempts to address this problem by indicating solicitations should provide for pre-priced options for out-year performance. The Circular also notes that the use of renewal options provides certain advantages including continuity of performance, and reduced turbulence and disruption. This guidance is somewhat in conflict with the Defense Acquisition Regulation which indicates resolicitation for annual requirements is preferred if the services are readily available on the open market [18:1-1503(b)(i)]^{*}.

Nevertheless, this policy is carried forward in both the proposed revision to DOD INST 4100.15 and Navy implementing directives. As originally envisioned, and explained in the Cost Comparison Handbook, the cost comparison would be made over a three year period. Government labor costs would be inflated for out years at the rate of 4% per year. In view

^{*}DAR References cite paragraph vice page number.

of recent annual inflationary trends of 12% or more, the appropriateness of this rate may be questionable.

However, it soon became apparent that another factor might make the three year comparison less than satisfactory as a method of determining true private commercial cost for the proposed service over a three year period. The Service Contract Act of 1965 and the clause entitled "Fair Labor Standards Act and Service Contract Act-Price Adjustment" require contractors to pay at least the prevailing wage rates under the Department of Labor Wage Standards in effect at that time and in that particular geographical location where the service is being performed [78:7-1903.41, 78:7-1905]. The clauses noted above are required for inclusion in all service contracts in excess of \$2500 in the United States and its' territories. The skills covered in the Act are mostly blue collar and thus are normally associated with commercial and industrial functions found under the CITA program.

The result of this Act is that when new wage determinations are released by the Department of Labor, the contractor must meet the new wage standards, and the Government must negotiate any necessary price adjustments for his increased costs. Therefore, the prices quoted by the contractor for option year performance do not necessarily represent the true costs the Government might incur if the private sector performed the service.

During September and the early part of October 1979 this issue created considerable turbulence at some Navy Field Procurement System activities as Contracting Officers attempted to obtain guidance. This issue was apparently "put to bed" when NAVSUP indicated by message that the Cost Comparison Handbook was being revised to indicate that where the Service Contract Act mandates redetermination of labor rates for covered contractor employees, the cost comparison will be made for one year only. This will not change the requirement, however, for pre-priced options where the Service Contract Act is not applicable [53].

This new procedure applies only to solicitations released after October 1, 1979. Those released earlier will continue to use the three year cost comparison process [53].

The change in the length of time for which a cost comparison will be conducted is an example of the dynamic and fluctuating nature of this program. Much of the latest policy and implementation guidance appears to be obtained by "word of mouth." Many implementing directives (such as References 43, 44, 48, 66) have not as yet been revised to reflect the latest change. Contracting Officers would be well advised to check their message traffic daily. Significant policy changes or implementing guidance may be laying in their in-basket.

B. SOLICITATION/EVALUATION CYCLE

This cycle commences with release of the solicitation and preparation of the Government in-house cost estimate.

During this time the Contracting Officer is involved in several different activities including the conducting of prebid or preproposal conferences, negotiations, if necessary, with prospective offerers, including the Government, and, evaluation of private sector responses. This cycle concludes when the Contracting Officer enters the low evaluated private sector price on the cost comparison form. Research indicated several issues may be of importance to the Contracting Officer during this cycle. These issues are addressed in more detail below.

1. Prebid/Preproposal Conferences

Interviews with contracting professionals produced varied responses as to whether or not a prebid or preproposal conference was desirable or necessary. This researcher was unable to find any agency directives that indicated it was specifically required in CITA solicitations. However, following the guidelines expressed in DAR, some contracting offices, most notably those with more experience in C/I procedures, have made the use of prebid or preproposal conferences mandatory [78:2-207]. This includes not only the conference but the requirement for a site-visit as well.

Current NAVSUP directives indicate that Contracting Officers will be responsible for conducting prebid/preproposal conferences and, in conjunction with the requiring activity, providing explanations of cost procedures to be applied [48]. This would necessitate that the Contracting Officer have more than a passing familiarity with the procedures to be used in

calculating the Government in-house cost estimate and how it will be compared to private industry bids or offers. Of particular concern to many contractors appears to be the methodologies that will be used to conduct the actual cost comparison.

Reviews of preproposal memorandums indicate the need to explain in detail the cost differentials that will be used depending on whether the function is a conversion or new start [7]. In one instance it was noted that this consideration was ignored during the preproposal conference. The contract negotiator in replying to a question regarding how much lower the contractor's bid had to be than the Government in-house estimate for him to receive the award, indicated that if the bid was lower, a contract would be awarded. In this instance a conversion was contemplated; therefore, the correct reply should have been that in order to receive the award the total savings over the Government in-house estimate must be at least equal to 10% of the Government personnel costs [64].

Interviewees indicated that if the service to be provided would result in a product, it was desirable to have a sample of that product produced by the Government available for review at the prebid/preproposal conference. Concern was also expressed by contractors at the conferences regarding the use of Bid and Performance Bonds and whether the Government would be including a like amount in their cost estimation. The answer provided was that no similar amount would be

included in the Government estimate [7]. Interest was also evident in the possibility of using existing personnel, both civilian and military, in performance of the work if the contractor received the award. In at least one instance military personnel took leave and did in fact work for a short time for the contractor [5]. The interviewee indicated such action had been reviewed and approved by the Judge Advocate General (JAG) office.

Regarding the use of site visits in conjunction with pre-award surveys, some activities make their use mandatory and require the attendance of the contract negotiator even at distant locations such as Balboa in the Canal Zone. In another instance, the prospective offerer reviewed the site on his own, apparently without the knowledge of the Contracting Officer. If the Contracting Officer is to maintain control of the acquisition process and assure the integrity of the system, this researcher feels this latter procedure should be avoided.

Informal communications by prospective bidders or offerers without representation of or knowledge of the contracting office may result in the prospective contractor receiving additional or contrary information to that specified in the solicitation document. In this case, the solicitation may not be amended to reflect this information for review by all bidders. This could give the bidder with the added knowledge an advantage over other competitors. In other instances, as for example after award, it may lead to

disagreements between the Contracting Officer and the contractor as to whether the "written word" as expressed in the contract document or verbal information obtained from the activity during the solicitation cycle takes precedence in performance of the contract.

2. Negotiations

During interviews, personnel were asked if they thought the requirements of the CITA program would require the Contracting Officer to negotiate with the preparers of the Government cost estimate in the same manner as they would with other offerers. Most interviewees indicated that it would be extremely unlikely that they would be doing any negotiations directly with the Government. However, they indicated a high probability that pre-award or pre-proposal conferences might necessitate changes to the initial requirements or the statement of work. Therefore, if solicitation amendments were required for any reason, the Government should be treated exactly as another offerer. Procedures should be established to include the Task Group Chairperson on the distribution for all amendments to solicitations.

Similarly, interviewees indicated if requests for "clarifications" or similar questions arose, even if Formal Advertising was being used, they must be referred to the Task Group Chairperson through the Contracting Officer. One interviewee indicated that the excessive number of changes, clarifications, amendments and similar items might result in the actual cost comparison being based on "apples and oranges"

situations between the Government and contractor's concept of what is required to perform the desired service. If the number of changes to the original solicitation becomes numerous, this researcher feels the Contracting Officer must assure the Government in-house cost estimate reflects these changes to preserve the integrity of the entire comparison process.

3. Competition

As noted earlier in the discussion of the determination of non-availability of private sources to perform the desired service, if literally interpreted, the availability of even one source to perform the service is sufficient to preclude use of the exception of reliance on the private sector. Because of the relatively large and varied industrial base in existence in the United States, the likelihood of only one source being available is perhaps remote; however, in the event this is the case, it raises the question regarding the extent of competition in the solicitation and whether the Government may actually be considered to be a competitor. Many personnel interviewed indicated that they felt the Government was not in the true sense of the word a competitor. A review of existing CITA guidance sheds no light on this issue, although the literature search did reveal one instance where it was felt comparison of in-house costs with one "non-competitive" proposal was unsatisfactory [41].

One generally accepted broad definition of competition is as follows: [9:1A-B3]

An environment of varying dimensions relating to buy-sell relationships in which the buyer induces, stimulates or relies on conditions in the marketplace that cause independent sellers to contend confidently for the award of a contract.

If this definition is used as a basis for determining if the Government is a competitor, the immediate problem is that in CITA procurements, the Government is both the buyer and the seller. However, the Government is still an "independent seller" from all other sellers of the product or service.

If the definition is restricted to only price competition, which is generally the basis for deciding whether to perform the service in-house or to contract it out, there should be little to preclude the Government from being considered as a competitor. The DAR states that in order for price competition to exist, four conditions must be met.

(1) At least two responsible offerors, (2) who can satisfy the requirements, (3) independently contend for a contract to be awarded to the responsive, responsible offeror submitting the lowest evaluated price, (4) by submitting priced offers responsive to expressed requirements of the solicitation.
[78:3-807.7]

Use of this definition would only necessitate the characterization of the Government as an offeror to perform the services.

4. Evaluation of Low Bid/Offer

Another new issue for the Contracting Officer is the determination of the low contract price. It is the specific responsibility of the Contracting Officer to enter the "Contract Price" on line 10 of the cost comparison form [66]. Together with the

Government in-house cost estimate, this forms the basis for the commencement of the actual cost comparison.

Some contracting personnel indicated this determination would be no different for CITA requirements than for other types of procurement actions. However, when asked to indicate what figure would be entered for incentive or cost type contracts, they often were unsure of the correct figure or gave answers that did not conform to the existing guidance.

The only available published guidance uncovered by the researcher regarding the evaluation of specific pricing arrangements in procurements where a cost comparison will be conducted is included in the Cost Comparison Handbook [66].

The DAR subcommittee originally included pricing evaluation guidelines in their working proposal for inclusion of A-76 policies in the DAR [24]. However, this researcher observed that later proposed coverage submitted by the Army in response to the DAR Council's direction made no reference to the specific evaluation to be used on each type of pricing arrangement [27]. Indications are that the proposed FAR coverage will simply reference the guidelines provided in the Cost Comparison Handbook.

Firm fixed-price arrangements appear to present no particular problem in that the price of the low offerer or bidder will be entered as the "contract price" on line 10. However, the Cost Comparison Handbook is silent as to whether this should be with or without payment discounts offered by the contractor. Since discounts for early payment are used

as an evaluation criteria and could be expected to reduce total Government costs, recommendations have been made to include them in the evaluation process [50].

Fixed-Price Contracts with Economic Price Adjustments are not mentioned in the handbook; therefore, no definitive guidance exists for this type of pricing arrangement. It appears that the Contracting Officer may have to use his best judgment in this regard including recent price trends, indices, or other methodologies to determine a fair and reasonable price for this purpose.

Fixed-Price Incentive pricing arrangements, such as Fixed-Price Incentive-Firm Target (FPIF), are to be evaluated based on the target price. Prior to establishment of guidance in the Cost Comparison Handbook there was serious consideration as to whether it should be the ceiling rather than the target price. Many civil service unions felt that the combination of costs which represented the maximum potential liability to the Government should be used vice a target price. NAVMAT internal memorandums expressed similar thoughts [42].

Other fixed-price type arrangements including Fixed-Price Incentive-Successive Targets, Fixed-Price with Redetermination Retroactive and Prospective are not mentioned in the handbook. Interviews with contracting personnel indicate the likelihood of using these types of pricing arrangements is low. Additionally, Fixed-Price with Redetermination-Retroactive is not compatible with the cost

comparison process because this arrangement provides for adjusting contract price after performance. Additionally, DAR limits its use to small dollar value, short term contracts for research and development [9].

Cost Reimbursement Contracts are only addressed in general terms in the Handbook but must be subjected to meticulous technical and cost evaluation to assure that estimated costs are neither over nor under estimated. Interviews with OFPP personnel indicate that auditors should be requested to check offerers' estimates to ensure they are neither unrealistically low nor too high. The usual procedure in price negotiations is for the contractor to submit a proposal and the Government to attempt to negotiate a price that is fair and reasonable to both parties. This typically results in the development of a Government position that is somewhat lower than that offered by the contractor. However, to insure the equity of the cost comparison process, upward price revisions to contractor offers may need to be negotiated.

Although the Handbook does emphasize the necessity for evaluating cost realism, it does not indicate what will be entered on line ten of the cost comparison form for Cost-Plus-Fixed-Fee (CPFF) or Cost-Plus-Incentive-Fee (CPIF) contracts. Interviews indicated that in the first case, the sum of the total estimated costs and the fixed fee would be entered. In the second case, the target cost combined with the target fee would be used.

The Handbook does address the use of Cost-Plus-Award-Fee (CPAF) contracts. In this case the performance level comparable to that attributed to Government employees in preparing the Government estimate will be used to estimate the amount of the fee. The issue here is how best to determine that level. This relates to the SOW and emphasizes the need for it to provide a standard of performance that would be acceptable for both Government and contractor performance. No specific guidance is given in this regard, but early draft OFPP working papers for more definitive FAR coverage in this area indicate the "contract price" shall be the total estimated cost, base fee, and that portion of the total award fee commensurate with the performance level attributed to Government employees. The Contracting Officer must make the determination of what portion of the award fee would be appropriate. This would require consultation with estimators and functional managers but in the last analysis would require the Contracting Officer to exercise an informed, independent judgment.

If Time and Material or Labor Hour type contracts are used, the Handbook indicates the total estimated cost of performance may be calculated and entered or, alternatively, comparable rates may be developed and the cost comparison conducted on the basis of rates rather than total costs. The research did not reveal any instances where this later method was used.

Of all areas reviewed in this research effort, the determination of the "contract price" to be entered on the cost comparison form may represent one of the most important responsibilities directly attributable to the Contracting Officer. However, many contracting personnel were not aware of their total responsibilities in this regard or familiar with the methodologies for obtaining the "contract price" for use in the actual cost comparison.

C. AWARD CYCLE

The award cycle commences with the actual comparison of the Government in-house cost estimate with the low bid or offer submitted by a private commercial source. It concludes with the award of a contract or the cancellation of the solicitation. During this time frame the Contracting Officer will be concerned with assuring that the bid opening, cost comparison, and public review are conducted in accordance with established guidelines. Other issues identified for his possible increased attention include the late receipt of the Government in-house estimate, discrepancies in the cost comparison process, and considerations regarding possible protests or appeals.

1. Evaluation/Award Factors

At the bid opening or upon completion of negotiations and determination of the low offeror, adjustments will be made to reflect certain other costs to the Government that will be incurred only if a contract is awarded. These could

include costs associated with transportation, contract administration, Government furnished materials and supplies, contractor use of Government-owned equipment and facilities, standby maintenance costs, and Government personnel termination costs.

Several contracting personnel interviewed indicated these costs adjustments should be treated as "evaluation factors" and should therefore more appropriately be addressed in the solicitation and evaluation cycle of the contracting subphase. However, it is the observation of the researcher that they are not evaluation factors in the true sense of the word. As noted in the NAVMAT memorandum to the committee reviewing the possible incorporation of the firm bid/offer procedure into DAR, these factors are really award factors [40]. In support of this position the memorandum noted:

[40:2]

1. They are not used to determine an offeror's grasp of the requirement.
2. They are not used as a means to evaluate an offeror's expertise.
3. They are not used as a means to differentiate or rank offerors.
4. They are not used in determining the competitive range.
5. They are not equally applied to all offerors.
6. They are applied only to the otherwise successful bidder/offeror.

NAVMAT's recommendation was that they, therefore, be treated as award factors in a manner similar to, for example, responsibility determinations and EEO compliances [40].

2. Late Submission of Government In-House Cost Estimate

Existing directives, including the Cost Comparison Handbook and the draft DOD Instruction on the CITA program, indicate that the sealed in-house cost estimate must be submitted to the Contracting Officer by the required submission date for bids and proposals. The researcher was unsuccessful in locating any written guidance on what actions the Contracting Officer was to take in the event the cost estimate was submitted late.

The cost comparison clause used in Formally Advertised Procurements makes no mention of the possible submission of a late cost estimate by the Government. Interviewees indicated they were not sure what the procedures would be if this situation arose. Automatic extension of the solicitation was one suggestion offered. Support for this position was also found in NAVSUP's recommendations regarding inclusion of the firm/bid rule in DAR [50]. This might necessitate modification of the existing clauses to reflect the fact that the Government need not submit its estimate in accordance with the requirements levied on all other bidders. Most interviewees indicated this was not an acceptable procedure since it would provide favored treatment to the Government and reflect on the integrity of the bidding process. However, existing and proposed directives require the use of the firm bid/offer procedure and the cost comparison if in-house performance is to be based on lower cost [25,26,44,48,64,66].

The cost comparison cannot be accomplished without the Government in-house cost estimate.

Contracting officers interviewed indicated that the possible late submission of the Government cost estimate was such an important issue that they would need to monitor this item in some detail to preclude its occurrence. Many of them had already directed the contract negotiator to maintain close interface with the task group and immediately extend the bid opening date prior to opening if it appeared even remotely possible that the Government cost estimate would not be submitted on time.

The cost comparison clause currently being used in most negotiated solicitations reviewed during this research included a reference to the provision "Late Proposals, Modification of Proposals, and Withdrawal of Proposals", and indicates the Government in-house cost estimate will be considered a proposal [70]. The provision for late proposals is included in all negotiated solicitations as part of Standard Form 33A, Solicitation Instructions and Conditions.

In general, the provision indicates late proposals received after the date specified for receipt will not be considered. If the provision is applicable to the Government cost estimate as the current clause indicates, it would seem it must be rejected even in the face of the fact that a cost comparison, as noted earlier, is required. Contracting personnel indicated, that as is the case in Formal Advertising, there appears to be a conflict between the requirements

mandated by the CITA directives and some contracting clauses and provisions in this area.

3. Revealing of the In-House Government Cost Estimate

A review of the current cost comparison clauses would seem to indicate a potential problem could develop regarding the correct time to reveal the Government in-house cost estimate to the public.

The clause used for Formally Advertised Procurements including Small Business Restricted Advertising indicates the Government cost estimate will be revealed at the bid opening. Contractors who submit a bid and the labor union of the Government employees will be provided the in-house estimate for their review at bid opening or as soon as practicable thereafter. Since the use of either unrestricted or restricted formal advertising methods will satisfy the requirements for a cost comparison, this procedure would seem satisfactory.

However, in the case of negotiated solicitation, contracting personnel interviewed indicated the existing clause coverage is deficient. The clause stipulates that at the conclusion of the negotiation process the Contracting Officer will set a time and place for public opening of the Government in-house estimate and provide appropriate notification. The Contracting Officer will then open and record the in-house cost estimate and provide a copy to interested personnel upon request. No information relating to any contractor proposal will, however, be provided. Interviewees and

observations of the researcher indicated this procedure was not being followed in the case of 8(a) set-asides where further resolicitation would be required if the in-house estimate was lower than the offered contract price. Contracting Officers interviewed indicated that the existing clause for negotiated procurements needed to be modified to indicate that the Government in-house cost estimate will not be revealed in the case of 8(a) negotiated procurements. Additionally, they felt that attendance of union representatives and interested contracting personnel would not be appropriate in this case.

Even if only the 8(a) offerer was in attendance, the integrity of the entire process would seem to be compromised. There is nothing to preclude him from submitting later bids or offers during the resolicitation process. Therefore, his attendance would certainly not be equitable to all parties since he would be aware of how low he had to quote on the resolicitation to beat the Government estimate. The point could be made that he already has an advantage over other possible competitors even if he is not present at the opening. If he does not receive the award as a result of the 8(a) solicitation, he knows his initial price is too high and he must quote lower on the resolicitation. Despite this potential conflict, the researcher was unable to locate any instances where the cost comparison clause had been modified to reflect the special use of 8(a) solicitation methods.

4. Announcement of the Results of the Cost Comparison/
Public Review

A review of the Cost Comparison Handbook and NAVSUP CNM Procurement Planning Memorandum (PPM) Number 49 indicates there will actually be two review periods, the first occurring at the bid or public opening and the second after the Task Group Decision Summary Recommendation has been completed and approved by the Approving Authority.

Presiding at bid openings and assuring necessary procedures are followed to avoid any accusation of an unfair comparison is one of the Contracting Officer's responsibilities [48]. However, several personnel interviewed were not fully aware of the specific procedural requirements to accomplish this "initial cost comparison" including the necessity to make a statement indicating the preliminary results [44].

The required statements specify that preliminary calculations indicate either in-house or contract operation provides the most economical method of satisfying the requirement but also indicate that final determination will not be made until calculations are verified and responsibility determinations completed in the case of a low offer by a contractor [44].

This researcher observes that should a subsequent error be discovered in the cost comparison during the audit and review process, the chance for misunderstandings and attacks on the integrity of the system could be greater if the Contracting Officer failed to make the required public announcement at the bid opening.

The second review period occurs after the Contracting Officer receives the audited cost comparison form with the approved decision summary from the Approving Authority. The Contracting Officer announces the results and withholds award pending public review. Both clauses currently in use indicate award will be withheld a minimum of five workdays. The Cost Comparison Handbook indicates a minimum of five working days and a maximum of fifteen working days. However, there is the issue raised by NAVSUP as to whether a five day review period was sufficient time for public review [50]. If mail notification is used the entire five day period may be taken up in the mails and bidders thereby denied the opportunity to examine the analysis. Interviews with personnel having more experience in CITA contracting, such as Travis AFB indicate a preference for the fifteen day review period.

5. Verification of the Government Cost Estimate

There are two different times after bid opening or completion of negotiations during which a discrepancy may be uncovered in the Government estimate or in the cost comparison process itself. The first is during the audit of the cost comparison form by the independent auditing activity. The second is during the public review of the results of the cost comparison and Decision Summary Recommendation.

In the first instance if no, or only minor, discrepancies are noted during the review, the reviewing authority will simply execute the audit certificate and return it to the

Task Group Chairperson. If significant discrepancies are noted it will be reported to the Task Group Chairperson along with indications as to the impact of the discrepancy or recommendations as to whether the preparer should correct and resubmit his estimate [66].

This researcher was unable to locate during the literature search any definitive guidance as to what constitutes a "significant discrepancy". However, most personnel interviewed indicated a significant discrepancy would be one that altered the relative standing between the low bidder and the Government.

Contracting personnel were further asked what actions would be appropriate if the Government cost estimate could not be corrected in a timely manner or at least by the time frame that corresponds to the expiration dates of the bids or proposals. Some contract negotiators expressed the view that even if formal advertising was used, the solicitation would have to be cancelled and the requirement resolicited even though all bids and the Government cost estimate had been exposed. They did not seem familiar in all cases with the different requirements in this regard depending on whether the solicitation is a new start or a conversion. In the case of a new start, the Government estimate will be rejected and a contract awarded [66]. However, in the case of a conversion, the solicitation may be cancelled [66]. Nowhere was the researcher able to find a requirement that the solicitation must be cancelled.

The same general considerations as noted above apply if a discrepancy is reported during the public review period. However, as a practical matter, most personnel interviewed indicated that since the Government cost estimate had by this time been audited twice, once before submission to the Contracting Officer, and once in conjunction with the cost comparison review after the bid opening, it was probably unlikely this situation would arise.

6. Appeals Versus Protests

One issue that constantly arose during the interviews was the general feeling by some personnel that the sensitive nature of CITA contracting program would result in a significant increase in the number of protests received in the contracting office. The opinion was expressed on more than one occasion that the stronger the local Government union representative the more likely there would be "protests" against the conversion of in-house functions to contractor performance.

The 1967 revision of the Circular was silent as to whether it conferred substantive rights or imposed binding requirements upon which a lawsuit or GAO protest could be pursued. The General Accounting Office (GAO) has, however, consistently held that the directives contained in OMB Circular A-76 are matters of Executive policy which are not within their jurisdiction [33]. Even in the case where an admittedly erroneous in-house cost analysis had been prepared casting doubt on whether the decision to retain work in-house was

proper, GAO indicated it was beyond their jurisdiction to provide a remedy [35]. GAO further noted that since the Circular is not a regulation having the force and effect of law, an agency's failure to comply with it would not render the action illegal [36]. Thus any contention that the agency's action is in violation of the Circular is not proper for consideration under the Bid Protest Procedures [36].

The 1979 Circular specifically indicates that it does not create any substantive or procedural basis for any person to challenge any agency action or inaction on the basis that such action is not in accordance with the Circular except as regards the appeals process mentioned in Section 11.

Section 11 indicates the appeals process will be used to resolve questions of the determination between in-house and contract performance. The appeal procedure does not authorize any action outside the agency or a judicial review, and agency decisions are final. The review of an appeal and a determination as to its merits are required to be made by an official at the same level or higher than the original Approving Authority, not by the Contracting Officer.

D. SUMMARY

Chapter VI has presented several issues that directly affect the contracting process of the Commercial Industrial Type Activities Program. In the Pre-Solicitation Cycle, the lack of specific coverage on this subject in the Defense Acquisition Regulation is noted. A survey was presented of

the solicitation and contract clauses currently being used by some field purchasing activities. Research indicates sources of supply, in particular the use of set-asides, have presented certain problems for contracting personnel. This is most apparent in considerations regarding possible re-solicitation efforts and disclosure of the Government in-house cost estimate. Issues regarding solicitation methodologies and contract types were reviewed along with observations relating to the use of option provisions and their relationship to the cost comparison process.

The use of pre-bid or pre-proposal conferences was surveyed in the Solicitation/Evaluation Cycle. Other issues addressed included the possibility of conducting some type of negotiations with the Government itself. Discussions as to whether the Government in-house cost estimate may be considered as competing with the bids or offers of private commercial concerns were presented. Lastly, potentially new methodologies relating to the determination of the low private industry bid or offer were surveyed.

In the Award Cycle, observations relating to the proper classification of added costs to the Government for contract versus in-house performance were noted. Issues surrounding possible late submission of the Government in-house cost estimate appear to be of considerable importance to the Contracting Officer. The current inconsistencies regarding the appropriate time to reveal the Government in-house cost estimate were again examined in conjunction with the bid or

public opening. Research reveals there may be some unanswered questions concerning the verification of the in-house cost estimate and the cost comparison. Finally, an analysis of the difference between the appeals and the protest processes was presented.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. SUMMARY

The evolution of the policy of reliance on the private sector to supply goods and services needed by the Government has been turbulent and controversial. Implementation efforts have been characterized as inconsistent and largely ineffective. The release of the latest OMB Circular No. A-76 is an attempt to bring some order to the process.

Shrinking resources have necessitated that the Department of Defense renew its efforts to have a significant portion of their service activities performed by private commercial concerns. One report reviewed during this research endeavor indicates that of approximately \$100 billion in the FY80 budget targeted for contracting efforts, \$40 billion will be in support of Agency CITA programs [28]. It is further estimated efforts representing \$30 billion will be accomplished by the private sector and \$10 billion will be spent in-house [28].

Accomplishment of Government objectives by utilization of the capability available in private industry is normally done by some type of contractual arrangement. Hence contracting professionals play a significant role in the furtherance of this policy guidance.

This research effort has focused on the role of the Contracting Officer in implementing the Circular principles.

This was accomplished by first reviewing policy development and implementation efforts, second, establishing a framework from which to review the role of the Contracting Officer in this process, and last, by identifying and analyzing potential problem areas he faces in carrying out the policy directives. As a result of the research, some conclusions have been reached regarding the current effectiveness of the acquisition process in support of the program. They are noted below followed by recommendations designed to assist in the implementation efforts.

B. CONCLUSIONS

This research effort has lead to several conclusions regarding the current implementation efforts of Naval Systems Command Field Contracting Officers in furtherance of the Government policy of reliance on the private enterprise system to provide needed supplies and services.

Conclusion 1. Under the guidelines of the Circular, the Contracting Officer does have new responsibilities in the determination of the availability of commercial sources to perform a specific Commercial Industrial Type Activity.

Conclusion 2. Informational solicitations of and by themselves are not a satisfactory method for making a decision to retain a function in-house due to the non-availability of commercial sources in the private sector.

Conclusion 3. Commerce Business Daily notices are of questionable value in assisting in the decision making process to support retention of a Commercial Industrial Type Activity (CITA) in-house.

Conclusion 4. Contracting offices are not making concerted efforts to assist in the development of multi-functional solicitations or exploring the possibility of combining the same requirement at different organizations into one solicitation document.

Conclusion 5. Due to the sensitive nature of the Commercial Industrial Type Activity (CITA) program, contracting offices are likely to receive more inquiries from union representatives, Congress, private industrial concerns, and other interested personnel.

Conclusion 6. In some cases, contracting offices are not organized or staffed to optimally support an expanding CITA program.

Conclusion 7. Barring significant policy change, contracting offices may expect to receive a considerable increase in their workload as a result of Navy efforts to implement the CITA program.

Conclusion 8. Practically speaking, it is virtually impossible to meet established Procurement Administrative Lead Time goals in the acquisition of Commercial Industrial Type Activity Support Services.

Conclusion 9. Decisions as to whether Naval Supply Systems Command Field Activities or Naval Facilities

Engineering Command contracting offices will provide acquisition support for a specific CITA function are not firmly established.

Conclusion 10. Contract negotiators are in need of additional general training in the CITA program, and in the cost comparison process in particular.

Conclusion 11. Either because of hesitancy, lack of resources, or physical disbursement of the activities supported, contracting personnel do not fully participate in the steering efforts of the Task Group.

Conclusion 12. Existing Department of Defense and Navy Directives do not reflect the current policy guidelines as expressed in OMB Circular No. A-76.

Conclusion 13. Existing Defense Acquisition Regulation coverage of service contracting in general and CITA Support Service contracting in particular is deficient or non-existent.

Conclusion 14. Due to the lack of knowledge of or unfamiliarity with current guidelines, contracting personnel are taking contracting actions which, in the long run, may be considered detrimental to the integrity of the acquisition process.

Conclusion 15. Other than 8(a) set-asides, the majority of possible conversions from in-house to contractor performance can be accomplished by the use of formal advertising solicitation methodologies.

Conclusion 16. Pre-bid/Pre-proposal Conferences in conjunction with site visits are an important adjunct to the Commercial Industrial Type Activities Support Services contracting process.

Conclusion 17. The Government is in fact a competitor in a manner similar to other commercial bidders or offerors in CITA Support Service contracting.

Conclusion 18. Additional costs to the Government of contracting-out are award factors and not evaluation factors.

Conclusion 19. Contracting personnel are not always aware of the procedures for accomplishing bid openings in Commercial Industrial Type Activities Support Service contracting.

Conclusion 20. Contracting personnel are not always familiar with the differentiation between the appeals and the protest processes as it applies to the provisions of OMB Circular No. A-76.

C. RECOMMENDATIONS

Recommendation 1: Contracting Officers consider the determination of the availability of commercial sources to be one of their primary responsibilities under the new Circular guidelines. Development of the sources of supply to meet requirements external to the Commercial Industrial Type Activity program has traditionally centered on the expertise of contracting professionals. Early participation

by contracting personnel in the assessment phase of the CITA cycle should help achieve this objective.

Recommendation 2: Informational solicitations be used, if at all, only in conjunction with other required methods for determining potential private sector interest in a CITA. If no commercial interest is expressed as a result of the issuance of an informational solicitation alone, Commerce Business Daily (CBD) notices are still required before a decision can be reached to retain performance in-house based on lack of private sector interest.

Recommendation 3: The Office of Federal Procurement Policy provide more definitive guidance on the use of CBD notices including what constitutes a sufficient response. In the interim, Contracting Officers should be hesitant to use this methodology in lieu of a formal solicitation process to avoid unnecessarily extending the acquisition process.

Recommendation 4: Contracting officers play a more active rôle in the development of multifunctional solicitations and take the lead in the development of a single solicitation document for the same Commercial Industrial Type Activity at different organizations. The advantages of these approaches are generally lower overall acquisition and contract administration costs. The Contracting Officer must make professional judgments as to the desirability of combining requirements which may result in only larger more

experienced firms being able to compete for the award versus supporting the policy of increased utilization of small and disadvantaged businesses. Active and early coordination with those organizations supported by the contracting office would seem to be the best method to accomplish this objective.

Recommendation 5: Contracting personnel become totally familiar with the directives relating to communications with groups interested in the status or progress of the C/I Activities Program. This is important to prevent premature release of information resulting in possible embarrassment to the command and attacks on the integrity of the system.

Recommendation 6: Contracting Officers review their existing organizational and staffing structure especially as relates to the possibility of establishing dedicated Service Branches or a separate Contract Administration Branch. This is important to assure contracting offices are prepared to process CITA requests in the most effective and efficient manner.

Recommendation 7: Naval Supply Systems Command monitor field activity implementation efforts and provide additional resources commensurate with program growth. This is necessary to avoid worsening an already unsatisfactory workload situation. Contracting offices should assure their existing resources are optimally organized to support projected program growth.

Recommendation 8: Contracting Officers reject statements of work that are not adequate for solicitation purposes and require resubmission rather than attempting to correct and update them after receipt in the contracting office. This will necessitate that contract negotiators become more familiar with the elements of a good CITA work statement. Internal milestones should be established and milestone integrity maintained. This is best accomplished by active management attention of the Contracting Officer early in the cycle. Additionally, the Naval Supply Systems Command should recognize that the unique characteristics of CITA contracting preclude attainment of existing Procurement Administrative Lead Time goals. Realistic standards should be provided to all field activities and attainment of these standards monitored.

Recommendation 9: Naval Supply Systems Command and the Naval Facilities Engineering Command definitize the agreements as to which command will procure a specific service function. This will assist in the development of specialized expertise at the various contracting offices in a particular CITA and enhance the coordination, preparation, and submission of statements of work.

Recommendation 10: Contracting offices establish dedicated training programs centered around the key reference material noted in this research effort.

Recommendation 11: Contracting offices attempt to be more supportive of the internal planning efforts of the Task

Group. This is important to assure the establishment of realistic milestones, preparation and submission of accurate and complete statements of work, and maintenance of the integrity of the system. This may best be accomplished by coordination and development of schedules with the various organizations supported early in the planning cycle and definitely before receipt of the purchase request in the contracting office.

Recommendation 12: Department of Defense and Navy directives be revised and clarified to conform with existing policy guidelines. This would enhance the ability of field contracting offices to achieve consistent policy implementation.

Recommendation 13: Separate coverage of service contracting be included in the Defense Acquisition Regulation including a distinct section on CITA Support Service Contracting. This is desirable to eliminate much of the confusion surrounding almost all the issues addressed in the Contracting Cycle of the Acquisition Phase of this research effort. This would include such issues as the inconsistencies and voids in current clause usage, procedures regarding the use of 8(a) set-asides, the use of options and the cost comparison process, methodologies for determining the low private sector bid or offer, treatment of late submission of the Government in-house estimate and determination of what constitutes a significant discrepancy in the Government in-house cost estimate. A step to the

attainment of this objective would be the decision by the DAR council to incorporate the Firm Bid/Offer procedure (DAR Case 76-144), which in one form or another has been under review since 1972, into the regulatory framework.

Recommendation 14: Contracting professionals should take aggressive action to assure the integrity of the system is above reproach. This is important if the general public is to have faith in the principles of consistency and equity expressed in the Circular. Contracting Officers might first assess their own actions in terms of the possibility of inadvertently placing themselves in a compromising position. Since procurement personnel are perhaps more familiar with the contents and intent of such directives as the Standards of Conduct, they should provide such assistance and guidance to the Task Group Chairperson as is necessary to make sure all members have a firm understanding of their duties and responsibilities in this regard.

Recommendation 15: In most instances, formal advertising methods should be used to accomplish the Cost Comparison for potential conversions of in-house to contractor performance. This is best accomplished by requiring the submission of a performance oriented statement of work detailing what is to be accomplished, but not how it is to be done.

Recommendation 16: Contracting offices should make maximum use of pre-bid/pre-proposal conferences. This is

important because many contractors are not aware of the new concepts and procedures involved in CITA Support Service Contracting. This will also mandate that contract negotiators become familiar with the cost comparison process to provide intelligent answers to questions posed at the conference.

Recommendation 17: To preserve the equitability and integrity of the CITA acquisition process, Contracting Officers should consider the Government as simply another potential source of supply. Procedures regarding submission of the in-house cost estimate, negotiations, distribution of solicitation amendments, and similar items should be the same for the Government as for other potential contractors. This objective can best be accomplished by considering the Task Group Chairperson as being equivalent to the president or general manager of a private commercial concern and directing all communications accordingly.

Recommendation 18: Contracting Officers emphasize at pre-bid/pre-proposal conferences and by other appropriate methods that the additional Government costs to be incurred if a contract is released are award factors. This is desirable to permit a clear distinction between the contractors quoted price and the total cost to the Government should a contract be awarded.

Recommendation 19: Contract negotiators and personnel who will be directly involved in a Bid or Public Opening

for contracting-out actions review existing CITA directives to ensure the process will be accomplished in a professional manner.

Recommendation 20: Contracting Officers review the guidance in the Circular itself to assure they have a firm understanding of the appeals concept. This is significant for the Contracting Officer to place his role in both the appeal and protest processes in proper perspective.

D. CONTRIBUTION OF THE STUDY/SUGGESTED AREAS FOR FURTHER RESEARCH

This research effort should be of benefit to any contracting office and assist in the professional development of most acquisition personnel. Since the organization and thrust of the research has been from a micro rather than macro viewpoint, it should be of particular benefit to contracting professionals at field and base level commands.

Does the Contracting Officer face new and significant issues relating to the acquisition of Commercial Industrial Type Activity Support Services? It is the observation of this researcher that he faces increased responsibilities and new challenges to those normally encountered in other field level contracting efforts. Additionally, he must be prepared to assess his own internal organizational structure and contracting methodologies in order to provide optimal support for the rapidly expanding Commercial Industrial Type Activity Program.

There are other issues not directly addressed in this report which may provide the basis for further research efforts regarding implementation of the policy guidelines expressed in OMB Circular No. A-76. Most notable would be the potential contract administration problems alluded to only briefly in this research effort. The nature of the program lends itself extremely well to the development of a case study which could trace the evolution of an actual CITASS emphasizing the roles of the other players in the process in addition to that of the Contracting Officer.

APPENDIX A

KEY PERSONNEL CONTACTED

Ayars, Jeff, Contract Negotiator,
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21,22 September 1979.

Bertholdi, Don R., Deputy Director
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11,14 September 1979.

Brochu, CDR Robert, Chairman
NAVSUP A-76 Committee, Acquisition and Contracting Division
Supply System Command, Washington, D.C.
12 September 1979.

Chenier, Clara, Contract Negotiator
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12 September 1979.

Israelian, Ruben, Procurement Analyst
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Naval Supply Systems Command, Washington D.C.
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Naval Material Command, Washington D.C.
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Kalapos, LCDR Mike, Director
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Naval Supply Center, Oakland, Ca.
11 September 1979.

Levy, Warren, Chief of Services Branch
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Various: September 1979-February 1980.

McWilliams, MSGT Sheldon R., Contract Administrator
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Ruppman, LCDR Heinz, Director,
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Various: September 1979-March 1980.

Walters, MSGT Joseph, Contract Negotiator
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11 September 1979.

Williams, Carolyn D., Head
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Naval Regional Contracting Office, Washington, D.C.
27 September 1979.

APPENDIX B

OFFICE OF MANAGEMENT AND BUDGET CIRCULAR NO. A-76 REVISED

Policies for Acquiring Commercial or Industrial
Products and Services Needed by the Government.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 29, 1979

CIRCULAR NO. A-76

Revised

Transmittal Memorandum No. 4

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for Acquiring Commercial or Industrial Products and
Services Needed by the Government

Transmitted herewith is a revision of Office of Management and Budget Circular A-76, which replaces Transmittal Memorandum No. 1, dated August 30, 1967, Transmittal Memorandum No. 2, dated October 18, 1976, and Transmittal Memorandum No. 3, dated June 13, 1977.

The revised Circular (1) reaffirms the Government's general policy of reliance on the private sector for goods and services, while recognizing that (2) certain functions are inherently governmental in nature and must be performed by Government personnel, and (3) relative cost must be given appropriate consideration in decisions between in-house performance and reliance on private commercial sources. The balanced approach in this revised Circular is designed to achieve consistent policy implementation in all agencies, equitable treatment of all parties, and improved economy and efficiency in providing goods and performing services needed by the Government.

To support the increased emphasis on relative economy of Government and contract performance, a comprehensive Cost Comparison Handbook is provided as a supplement to the Circular. This Handbook is to be used by all agencies in conducting comparative cost analyses. The Handbook provides instructions for determining the total cost to Government for each alternative and will provide a more accurate basis for cost-based decisions.

This revision of Circular A-76 is the result of an extensive review of the Circular and its implementation by executive agencies, and careful consideration of all comments submitted on the draft revision that was published in August 1978. Many of those comments were accommodated through clarification and refinement of the draft. Supplementary guidance on special subjects will be developed as needed.

Application to R&D Activities

Some concern was expressed over the potential impact of the application of this Circular to Government R&D activities. While agencies with a need for in-house R&D capability can consider a "core capability" in this area as a "governmental function," additional guidance is needed to ensure some consistency in determining and justifying the size of that core capability and applying the Circular to R&D requirements, in excess of that level of capacity.

An interagency committee jointly sponsored by the Office of Federal Procurement Policy and the Office of Science and Technology Policy, has been established under the Federal Coordinating Council for Science, Engineering, and Technology, to study these issues and recommend guidelines for appropriate and uniform agency implementation. Supplemental guidance addressing R&D activities will then be developed and, after public review and comment, be issued as an amendment to the Circular. In the interim, compliance with this Circular and the periodic review of inventoried R&D activities are to be deferred for one year pending completion of the study, except for new starts and expansions, as defined in the Circular. Additional guidance will be provided on determining justified "core capability" and applying the policy to other R&D requirements to assure that essential in-house capability is maintained, and that the Government and taxpayers' interests are properly considered in contract versus in-house decisions.

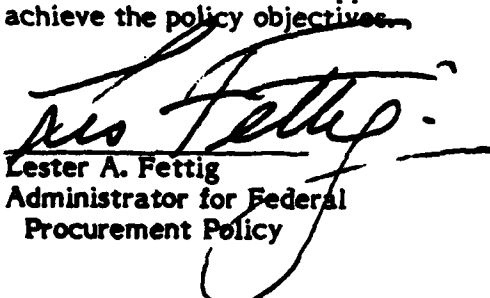
Government-Owned Contractor-Operated Activities

Government-owned, contractor-operated (GOCO) activities were excluded from prior issuances of the Circular. A comprehensive review of all GOCO activities is necessary to determine whether they can be completely treated under the terms of this Circular. In the interim, this Circular is to be applied only to new starts and expansions of Government-owned equipment and facilities.

Personnel Ceilings

The relationship between Circular A-76 and agency personnel ceilings was reviewed in some detail and clarified in the Circular. While it is clearly specified that agencies will not use the Circular to contract out solely to meet personnel ceilings, it is equally clear that agencies will contract out when justified under the Circular regardless of the relationship between personnel levels and authorized ceilings. Conversely, contracts for activities that are shown to be justified for in-house performance will be terminated as quickly as in-house capability can be established; when the additional spaces required cannot be accommodated within the agency's personnel ceiling, a request for adjustment will be submitted to OMB in conjunction with the annual budget review process.

The Office of Management and Budget will monitor agency implementation of this revised Circular, providing guidance and interpretations as required. Further revisions and supplements will be issued as necessary in the future to achieve the policy objectives.


Lester A. Fettig
Administrator for Federal
Procurement Policy


James T. McIntyre, Jr.
Director



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 29, 1979

CIRCULAR NO. A-76
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Policies for Acquiring Commercial or Industrial Products and
Services Needed by the Government

1. Purpose. This Circular establishes the policies and procedures used to determine whether needed commercial or industrial type work should be done by contract with private sources or in-house using Government facilities and personnel. This Circular replaces OMB Circular No. A-76, dated August 30, 1967, and all subsequent amendments.

2. Background. In a democratic free enterprise economic system, the Government should not compete with its citizens. The private enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on competitive private enterprise to supply the products and services it needs.

This policy has been expressed in Bureau of the Budget Bulletins issued in 1955, 1957, and 1960. In 1966, Circular No. A-76 was issued and, for the first time, prescribed the policy and implementing guidelines in a permanent directive. The Circular was revised in 1967, by Transmittal Memorandum No. 1, to clarify some provisions and to lessen the burden of work by the agencies in implementation. Transmittal Memorandum No. 2 was issued in 1976, providing additional guidance on cost comparisons and prescribing standard cost factors for Federal employee retirement and insurance benefits.

In 1977, a comprehensive review of the Circular and its implementation was initiated. Transmittal Memorandum No. 3 was issued on June 13, 1977, announcing the review and temporarily reducing the Government retirement cost factor. This revision is the result of that review and careful consideration of comments from all interested parties.

3. Responsibility. Each agency head has the responsibility to ensure that the provisions of this Circular are followed. This Circular provides administrative direction to heads of agencies and does not establish, and shall not be construed to create, any substantive or procedural basis for any person to challenge any agency action or inaction on the basis that such action was not in accordance with this Circular, except as specifically set forth in Section 11 below.

4. Policy. This policy builds on three equally valid policy precepts:

a. Rely on the Private Sector. The Government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the Government to act on the public's behalf.

b. Retain Certain Governmental Functions In-House. Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees.

c. Aim for Economy; Cost Comparisons. When private performance is feasible and no overriding factors require in-house performance, the American people deserve and expect the most economical performance and, therefore, rigorous comparison of contract costs versus in-house costs should be used, when appropriate, to decide how the work will be done.

5. Definitions. For the purposes of this Circular:

a. A "Government commercial or industrial activity" is one which is operated and managed by a Federal executive agency and which provides a product or service that could be obtained from a private source. A representative, but not comprehensive, listing of such activities is provided in Attachment A. An activity can be identified with an organization or a type of work, but must be (1) separable from other functions so as to be suitable for performance either in-house or by contract; and (2) a regularly needed activity of an operational nature, not a one-time activity of short duration associated with support of a particular project.

b. An "expansion" is the modernization, replacement, upgrade, or enlargement of a Government commercial or industrial activity involving additional capital investment of \$100,000 or more, or increasing annual operating costs by \$200,000 or more; provided, the increase exceeds 20% of the total investment or annual operating cost. A consolidation of two or more activities is not an "expansion" unless the proposed total capital investment or operating cost exceeds the total from the individual activities by the amount of the threshold. An expansion which increases either capital investment or annual operating cost by 100% or more is a "new start."

c. A "conversion" is the transfer of work from a Government commercial or industrial activity to performance by a private commercial source under contract.

d. A "new start" is a newly-established Government commercial or industrial activity, including a transfer of work from contract to in-house performance. Also included is any expansion which would increase capital investment or annual operating cost by 100% or more.

e. A "private commercial source" is a private business, university, or other non-Federal activity, located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico, which provides a commercial or industrial product or service required by Government agencies.

f. A "Governmental function" is a function which must be performed in-house due to a special relationship in executing governmental responsibilities. Such governmental functions can fall into several categories:

(1) Discretionary application of Government authority, as in investigations, prosecutions and other judicial functions; in management of Government programs requiring value judgments, as in directing the national defense; management and direction of the Armed Services; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) Monetary transactions and entitlements, as in Government benefit programs; tax collection and revenue disbursements by the Government; control of the public treasury, accounts, and money supply; and the administration of public trusts.

(3) In-house core capabilities in the area of research, development, and testing, needed for technical analysis and evaluation and technology base management and maintenance. However, requirements for such services beyond the core capability which has been established and justified by the agency are not considered governmental functions.

6. Scope.

a. No executive agency will engage in or contract for commercial or industrial activities except in accordance with the provisions of this Circular, or as otherwise provided by law, including, for example, Title 44 of the U.S. Code.

b. The implementation provisions of this Circular do not apply to governmental functions as defined in paragraph 5(f). These functions must be performed in-house by Government personnel.

c. This Circular applies to the need for Government ownership in any "new start" or "expansion" of a Government-owned, contractor-operated (GOCO) facility.

d. Additional provisions are as follows:

(1) This Circular does not provide authority to enter into contracts. Guidelines governing contracts for goods and services are set forth in applicable acquisition regulations.

(2) This Circular will not be used as authority to enter into contracts which establish a situation tantamount to an employer-employee relationship between the Government and individual contract personnel. Additional guidance on this subject is provided in the Federal Personnel Manual issued by the Office of Personnel Management.

(3) This Circular will not be used to justify a conversion to contract solely to meet personnel ceilings or to avoid salary limitations. When in-house performance of a "new start" is justified under this Circular but cannot be accommodated within agency personnel ceilings, an appeal for necessary adjustment to implement this Circular agency-wide should be made to OMB in connection with the annual budget review process.

(4) Major system acquisitions are governed by the provisions of OMB Circular No. A-109, "Major System Acquisitions." Reliance on the private sector is one of the general policies contained in Circular A-109 to ensure competitive consideration of all alternatives before making a decision as to the best method of satisfying an agency mission need.

(5) This Circular does not apply to consulting services of a purely advisory nature relating to the governmental functions of agency administration and management and program management. Assistance in the management area may be provided either by Government staff organizations or from private sources, as deemed appropriate by executive agencies, in accordance with executive branch guidance on the use of consulting services.

(6) This Circular applies to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

(7) This Circular should not be applied when it would be contrary to law or inconsistent with the terms of any treaty or international agreement.

7. Use of Products and Services from Other Federal Agencies.

a. Excess property and services available from other Federal agencies should be used in preference to new starts or contracts, unless the needed product or service can be obtained more economically in the private sector. This is consistent with the Federal Property and Administrative Services Act of 1949 and related regulations.

b. When a commercial or industrial activity operated by an agency primarily to meet its own needs has excess capacity, that capacity can be used to provide products or services to other agencies.

(1) If a formal program is established for managing excess capacity, such as the ADP sharing program operated by GSA, capacity that has been reported as excess can be used by other agencies with no further justification. In the absence of a formal program and report of excess capacity, another agency's use of a Government activity must be justified in accordance with paragraph 8 of this Circular. When the cost justification is used, the agency requiring the product or service will solicit competitive bids or proposals to establish commercial costs, and award a contract when more economical. The prospective providing agency will prepare the Government cost estimate, in accordance with this Circular, for comparison with the commercial cost.

(2) It is not intended that agencies create or expand capacity for the purpose of providing commercially available products or services to other agencies. When the performing agency's own requirements increase, capacity used to support other agencies is no longer excess and should be used in preference to acquisition of additional capability. Consequently, agencies should not expand a commercial or industrial activity which is providing products or services to other agencies. The user agency (or agencies) should be informed, with sufficient notice to arrange alternative sources, that the support will be terminated unless exceptional circumstances prevent that agency from finding a new source.

c. In some cases, a commercial or industrial activity is operated for the primary purpose of providing a product or service to other agencies, such as the Federal Data Processing Centers or the Office of Personnel Management training centers. All such activities must be reviewed under this Circular to determine whether continued Government operation is justified. The review should be made at the earliest possible date, but under no circumstances later than October 1, 1981. Prior to that review, agencies may use the products and services available without further justification. When continued Government operation of the activity is approved, agencies may use the products or services provided, up to the level of capability approved, with no further justification. When expansion of such an activity is proposed, the justification for approval under this Circular can be based on the entire workload, including work for other agencies.

8. Government Operation of a Commercial or Industrial Activity. Government operation of a commercial or industrial activity may be authorized under one of the following conditions.

a. No Satisfactory Commercial Source Available.

(1) A Government commercial or industrial activity can be authorized without a comparative cost analysis when it is demonstrated that:

(a) There is no private commercial source capable of providing the product or service that is needed; or

(b) Use of a private commercial source would cause an unacceptable delay or disruption of an essential agency program.

(2) Before concluding that there is no private commercial source capable of providing the needed product or service, the agency must make all reasonable efforts to identify available sources.

(a) As a minimum, the agency must place at least three notices of the requirement in the Commerce Business Daily over a 90-day period. In the case of urgent requirements, publication in the Commerce Business Daily can be reduced to two notices over a 30-day period.

(b) Agencies' efforts to find satisfactory commercial sources, especially small and minority-owned businesses, should include obtaining assistance from the General Services Administration, Small Business Administration, and the Domestic and International Business Administration in the Department of Commerce.

(3) A conclusion that use of a commercial source would not be satisfactory because it would cause an unacceptable delay or disrupt an agency program requires a specific documented explanation.

(a) Delay or disruption must be spelled out specifically in terms of cost, time and performance measures.

(b) Disruption must be shown to be of a lasting or unacceptable nature. Transitory disruption caused by conversions are not sufficient grounds.

(c) In all cases, specific explanations must be documented. If it is known that the function has been performed by contract elsewhere or at another time, the justification must specify why circumstances are substantially different.

(d) The fact that an activity involves a classified program, or is part of an agency's basic mission, or that there is a possibility of a strike by contract employees is not an adequate justification for in-house performance of that activity. Urgency by itself is not an adequate reason for starting or continuing a Government commercial or industrial activity. It must be shown that commercial sources are not able and the Government is able to provide the product or service when needed.

b. National Defense.

(1) A Government commercial or industrial activity, operated by military personnel, may be justified when:

(a) The activity or military personnel assigned are utilized in or subject to deployment in a direct combat support role;

(b) The activity is essential for training in those skills which are exclusively military in nature; or

(c) The activity is needed to provide appropriate work assignments for career progression or a rotation base for overseas assignments.

(2) A Government commercial or industrial activity providing depot or intermediate level maintenance may be justified in accordance with criteria approved by the Secretary of Defense to ensure a ready and controlled source of technical competence and resources necessary to meet military contingencies. These criteria will limit the extent of in-house capability and capacity within the military departments for depot and intermediate maintenance support of mission-essential equipment to the minimum necessary to accomplish that objective. Justification under these criteria will require a detailed explanation, on a case-by-case basis, why the needed capability cannot be supplied by:

(a) A private commercial source; or

(b) Contract operation of Government-owned facilities.

Such justification must be approved at the military department assistant secretary level or equivalent in the defense agencies.

c. Higher Cost. A Government commercial or industrial activity may be authorized if a comparative cost analysis, prepared in accordance with paragraph 9 of this Circular, indicates that the Government can provide or is providing a product or service at a lower total cost than if it were obtained from a private commercial source.

9. Cost Comparisons. A decision for in-house performance based on economy must be supported by a comparative cost analysis prepared in accordance with this Circular and the supplementing Cost Comparison Handbook.

a. Common Ground Rules.

(1) Both Government and commercial cost figures must be based on the same scope of work and the same level of performance. This requires the preparation of a sufficiently precise work statement with performance standards that can be monitored for either mode of performance.

(2) Standard cost factors will be used as prescribed by the Cost Comparison Handbook and as supplemented by agencies for particular operations. It will be incumbent on each agency to defend any variations in costing from one case to another.

(3) Cost comparisons are to be aimed at full cost, to the maximum extent practical in all cases. All significant Government costs (including allocation of overhead and indirect costs) must be considered, both for direct Government performance and for administration of a contract.

(4) In the solicitation of bids or offers from contractors for workloads that are of a continuing nature, unless otherwise inappropriate, solicitations should provide for prepriced options or renewal options for the out-years. These measures will guard against "buy-in" pricing on the part of contractors. While recompetition also guards against "buy-ins," the use of prepriced or renewal options provides certain advantages such as continuity of operation, the possibility of lower contract prices when the contractor is required to provide equipment or facilities, and reduced turbulence and disruption.

(5) Ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity for products or services estimated to be less than \$100,000 in annual operating costs. Activities below this threshold should be performed by contract unless in-house performance is justified in accordance with paragraph 8.a. or b. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study may be conducted. Reasonable efforts should first be made to obtain satisfactory prices from existing commercial sources and to develop other competitive commercial sources.

(6) The cost comparison will use a rate of 10% per annum as the opportunity cost of capital investments and of the net proceeds from the potential sale of capital assets, as prescribed in the Cost Comparison Handbook.

b. Calculating Contract Costs.

(1) The contract cost figure must be based on a binding firm bid or proposal, solicited in accordance with pertinent acquisition regulations. Bidders or offerors must be told that an in-house cost estimate is being developed and that a contract may or may not result, depending on the comparative cost of the alternatives.

(2) The factor to be used for the Government's cost of administering contracts, in addition to other costs of using contract performance as specified in the Handbook, is 4% of the contract price or expected cost.

c. Calculating Costs of Government Operation.

(1) Each agency should assure that Government operations are organized and staffed for the most efficient performance. To the extent practicable and in accordance with agency manpower and personnel regulations, agencies should precede reviews under this Circular with internal management reviews and reorganizations for accomplishing the work more efficiently, when feasible.

(2) The Government cost factor to be used for Federal employee retirement benefits, based on a dynamic normal cost projection for the Civil Service Retirement Fund, is 20.4%.

(3) The Government cost factor to be used for Federal employee insurance (life and health) benefits, based on actual cost, is 3.7%.

(4) The Government cost factor to be used for Federal employee workmen's compensation, bonuses and awards, and unemployment programs is 1.9%.

d. An existing in-house activity will not be converted to contract performance on the basis of economy unless it will result in savings of at least 10% of the estimated Government personnel costs for the period of the comparative analysis.

e. A "new start" will not be approved on the basis of economy unless it will result in savings compared to contract performance at least equal to 10% of Government personnel costs, plus 25% of the cost of ownership of equipment and facilities, for the period of the comparative analysis.

f. All cost comparisons must be reviewed by an activity independent of the cost analysis preparation to ensure conformance to the instructions in the Cost Comparison Handbook.

10. Administering the Policy.

a. Implementation.

(1) Each agency will designate an official at the assistant secretary or equivalent level, and officials at subordinate contact points for major components, to have overall responsibility for implementation of this Circular within the agency.

(2) Each agency will establish one or more offices as central points of contact to maintain cognizance of specific implementation actions. These offices will have access to all decision documents and data pertinent to actions taken under the Circular and will respond, in a timely manner, to all requests concerning inventories, schedules, reviews, and results of reviews. In considering requests which include information supplied by contractors or prospective contractors, agencies will be guided by OFPP Policy Letter No. 78-3, "Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement."

(3) Within 90 days after the date of issuance, each agency will promulgate this Circular, with the minimum necessary internal instructions, identifying the designated official and the central and subordinate contact points. When issued, copies of the internal instructions will be forwarded to OMB's Office of Federal Procurement Policy for review. Copies of subsequent changes will also be forwarded for review.

(4) Each agency will recognize that work for the Federal Government may be performed by use of military personnel, civilian employees, and contract services, and that past experience demonstrates that all three methods have been responsive and dependable in performing sensitive and important work.

(5) Each agency will ensure that contracts awarded as a result of reviews under Circular A-76:

(a) Contain all applicable clauses and provisions related to equal employment opportunities, veterans' preference, and minimum wages and fringe benefits, including implementation of OFPP Policy Letter No. 78-2, dated March 29, 1978, relating to "wage busting;"

(b) Include a provision, consistent with Government post employment conflict of interest standards, that the contractor will give Federal employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings on the contract in positions for which they are qualified;

(c) Are awarded to a responsible and responsive bidder or offeror, as required by applicable acquisition regulations; and

(d) Are administered and monitored to achieve proper performance, using appropriate contractual remedies any time performance is less than satisfactory.

(6) Each agency will exert maximum effort to find suitable employment for any displaced Federal employees, including:

(a) Giving them priority consideration for suitable positions with the Government;

(b) Paying reasonable costs for training and relocation when these will contribute directly to placement;

(c) Arranging for gradual transition when conversions are made to provide greater opportunity for attrition and placement; and

(d) Coordinating with the Department of Labor and other agencies to obtain private sector employment for separated workers.

(7) Each agency will provide for alterations to the mode of performance to be timed in consonance with, and adjusted for, the budget process to the extent required and consistent with the firm bid cost study approach.

b. Inventories. Each agency will immediately compile a complete inventory of all commercial and industrial activities subject to this Circular.

(1) Agencies will prepare and maintain a complete inventory of all individual commercial or industrial activities (as defined in paragraph 5.a.), which they operate. In addition to general descriptive information, the inventory should include for each activity: the amount of the Government's capital investment, the annual cost of operation, the date the activity was last reviewed, and the basis on which the activity is being continued under this Circular. The inventory will be updated at least annually to reflect the results of reviews as conducted.

(2) Agencies will also prepare and maintain an inventory of all contracts in excess of \$100,000 annually, except those awarded under a duly authorized set aside program, for services which the agency determines could reasonably be performed in-house, including any activities that have been converted from in-house to contract performance. In addition to general descriptive information, the inventory will include: the contract number, name of the contractor, contract period, period of any options, and the total contract price or estimated cost. Inventory updates will reflect exercise of options and the termination and award of contracts.

c. Reviews. Agencies will prepare a detailed schedule for the review of each commercial or industrial activity and contract in the inventory to determine if the existing performance, in-house or contract, continues to be in accordance with the policy and guidelines of this Circular. The flow chart provided as Attachment B demonstrates the sequence of actions required for proper implementation of the Circular.

(1) The schedule for review of in-house commercial and industrial activities will provide for review of all activities during the three-year period following issuance of this revised Circular. Consideration should be given first to criteria that do not concern cost. Unless continuation is justified under paragraphs 8.a. or b., a cost comparison must be conducted to determine the relative cost of Government and private performance.

(2) The schedule for review of contracts will show the date that each contract (including options) will expire, and the date that the requirement will be reviewed to determine if contract performance is to be continued. The agency will review the contract cost and determine whether it is likely that the work can be performed in-house at a cost that is less than contract performance by 10% of Government personnel costs plus 25% of the cost of ownership of equipment and facilities. When this is determined to be likely, a cost comparison will be conducted.

(3) Both schedules will be completed and provided to the Office of Federal Procurement Policy, OMB, within 120 days of the date of issuance of this Circular. These schedules will be made available by the agency to all potentially affected employees and their representatives, and published for the information of contractors.

(4) Reviews will be conducted in accordance with the schedules, unless it is determined that a change in the schedule will be in the best interest of the Government. In such cases, after approval by the agency head or his designee, the schedule can be revised with 60 days notice to all affected parties.

(5) After the initial review, activities approved for continuation will be reviewed again at least once every five years. When it is determined by the agency head or his designee that the circumstances which supported the initial approval are not subject to change, subsequent reviews may be waived. These activities will be retained in the inventory, however, and so identified. A copy of the justification and the waiver will be made available to all interested parties upon request to the agency contact point.

(7) When the number of commercial and industrial activities and the number of covered contracts is so great that reviews cannot be completed in the prescribed time period, the agency may request approval from the Office of Federal Procurement Policy, OMB, to schedule the reviews over a longer period.

d. New Starts.

(1) A new start should not be initiated by an executive agency unless the justification for establishing the activity under the provisions of this Circular has been reviewed and approved by a senior official of the agency. A new start which involves a capital investment or annual costs of \$500,000 or more must be approved by the agency head or by an official at the assistant secretary or equivalent level.

(2) The actions to be taken under this Circular should normally be completed before the agency's budget request is submitted to OMB. Data in support of such budget requests will be submitted in accordance with OMB Circular No. A-11. In the case of a proposed new start involving a major capital investment where the item to be acquired requires a long lead time (e.g., ADP system, building), approval of budget resources will not constitute OMB approval of that method of meeting the agency need. A final determination to initiate the new start or to rely on a private commercial source, within the resources approved, will be made in accordance with this Circular and other applicable policies, prior to any commitment to a particular acquisition strategy.

(3) When Government ownership of facilities is necessary, the possibility of contract operation must be considered before in-house performance is approved as a new start. If justification for Government operation is dependent on relative cost, the comparative cost analysis may be delayed to accommodate the lead time necessary for acquiring the facilities.

(4) When in-house performance to meet a new requirement is not feasible, or when contract performance would be under an authorized set-aside program, a contract can be awarded without conducting a comparative cost analysis.

e. Set-Aside Programs

(1) It is the general policy of the Government, as expressed in the Small Business Act, to ensure that small businesses, including those owned and managed by disadvantaged persons, receive a fair share of Government contract awards.

(2) Consequently, contracts awarded under authorized set-aside programs will not be reviewed for possible in-house performance. Additionally, new requirements which would be suitable for award under a set-aside program should be satisfied by such a contract without a comparative cost analysis.

(3) On the other hand, in-house activities (in excess of \$100,000 annually) will not be considered for performance under a set-aside contract except when the conversion is justified by a comparative cost analysis.

11. Appeals.

a. Each agency will establish a procedure for an informal administrative review of determinations made under this Circular. This procedure will only be used to resolve questions of the determination between contract and in-house performance, and will not apply to questions concerning award to one contractor in preference to another contractor. Upon written request from a directly affected party raising a specific objection, the appeals procedure will provide for:

(1) An independent, objective review of the initial determination and the rationale upon which the decision was based.

(2) An expeditious determination, within 30 days, made by an official at the same or higher level than the official who approved the original decision.

b. The appeals procedure is to provide an administrative safeguard to assure that agency decisions are fair, equitable, and in accordance with established policy. This procedure does not authorize an appeal outside the agency or a judicial review.

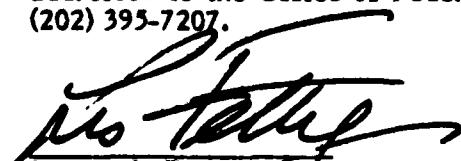
c. Since the appeal procedure is intended to protect the rights of all affected parties -- Federal employees and their representative organizations, contractors and potential contractors, and contract employees and their representatives -- the procedure and agency determinations may not be subject to negotiation, arbitration, or agreements with any one of those parties. Agency decisions are final.


d. Agency appeal procedures, when issued, will be submitted to OFPP for review pursuant to paragraph 10.a.(3).

12. Effective Date.

This Circular is effective May 1, 1979, but need not be applied to studies in process where a solicitation for contract bids or proposals was issued prior to the effective date.

Questions or inquiries about this Circular or its implementation should be addressed to the Office of Federal Procurement Policy, OMB, telephone number (202) 395-7207.


Lester A. Fettig
Administrator for Federal
Procurement Policy


James T. McIntyre, Jr.
Director

ATTACHMENT A

EXAMPLES OF COMMERCIAL AND INDUSTRIAL ACTIVITIES

Audiovisual Products and Services

- Photography (still, movie, aerial, etc.)
- Photographic processing (developing, printing, enlarging, etc.)
- Film and videotape production (script writing, direction, animation, editing, acting, etc.)
- Microfilming and other microforms
- Art and graphics services
- Distribution of audiovisual materials
- Reproduction and duplication of audiovisual products

Automatic Data Processing

- ADP services -- batch processing, time-sharing, etc.
- Programming and systems analysis, design, development, and simulation
- Key punching and data entry services
- Systems engineering and installation
- Equipment installation, operation, and maintenance

Maintenance, Overhaul, and Repair

- Aircraft and aircraft components
- Ships, boats, and components
- Motor vehicles
- Combat vehicles
- Railway systems
- Electronic equipment and systems
- Weapons and weapon systems
- Medical and dental equipment
- Office furniture and equipment
- Industrial plant equipment
- Photographic equipment
- Space systems

Systems Engineering, Installation, Operation, and Maintenance

- Communications systems -- voice, message, data; radio, wire, microwave, and satellite
- Missile ranges
- Satellite tracking and data acquisition
- Radar detection and tracking
- Television systems -- studio and transmission equipment, distribution systems, receivers, antennas, etc.
- Recreational areas
- Bulk storage facilities

Manufacturing, Fabrication, Processing, and Packaging

- Ordnance equipment
- Clothing and fabric products
- Liquid, gaseous, and chemical products
- Logging and lumber products
- Communications and electronics equipment
- Rubber and plastic products
- Optical and related products
- Sheet metal and foundry products
- Machined products
- Construction materials
- Test and instrumentation equipment

Real Property

- Design, engineering, construction, modification, repair, and maintenance of buildings and structures
- Construction, alteration, repair, and maintenance of roads and other surfaced areas
- Landscaping, drainage, mowing and care of grounds

Industrial Shops and Services

- Machine, carpentry, electrical and other shops
- Industrial gas production and recharging
- Equipment and instrument fabrication, repair and calibration
- Plumbing, heating, electrical, and air conditioning services, including repair
- Fire protection and prevention services
- Custodial and janitorial services
- Refuse collection and processing

Health Services

- Surgical, medical, dental, and psychiatric care
- Hospitalization, outpatient, and nursing care
- Physical examinations
- Eye and hearing examinations -- manufacturing and fitting glasses and hearing aids
- Medical and dental laboratories
- Dispensaries
- Preventive medicine
- Dietary services
- Veterinary services

Transportation

- Operation of motor pools
- Bus service
- Vehicle operation
- Air transportation
- Water transportation
- Trucking and hauling

Printing and Reproduction

- Printing and binding -- where the agency or department is exempted from the provisions of Title 44 of the U.S. Code
- Reproduction, copying, and duplication
- Blue-printing

Research and Development

- Basic research
- Applied research
- Development
- Concept formulation and demonstration
- R&D studies
- R&D testing
- R&D support services

Office Services

- Stenographic recording and transcribing
- Word processing/data entry
- Mail/messenger
- Translation
- Information systems and distribution
- Financial auditing and services
- Management auditing

Security

- Guard and protective services
- Systems engineering, installation, and maintenance of security systems and individual privacy systems
- Forensic laboratories

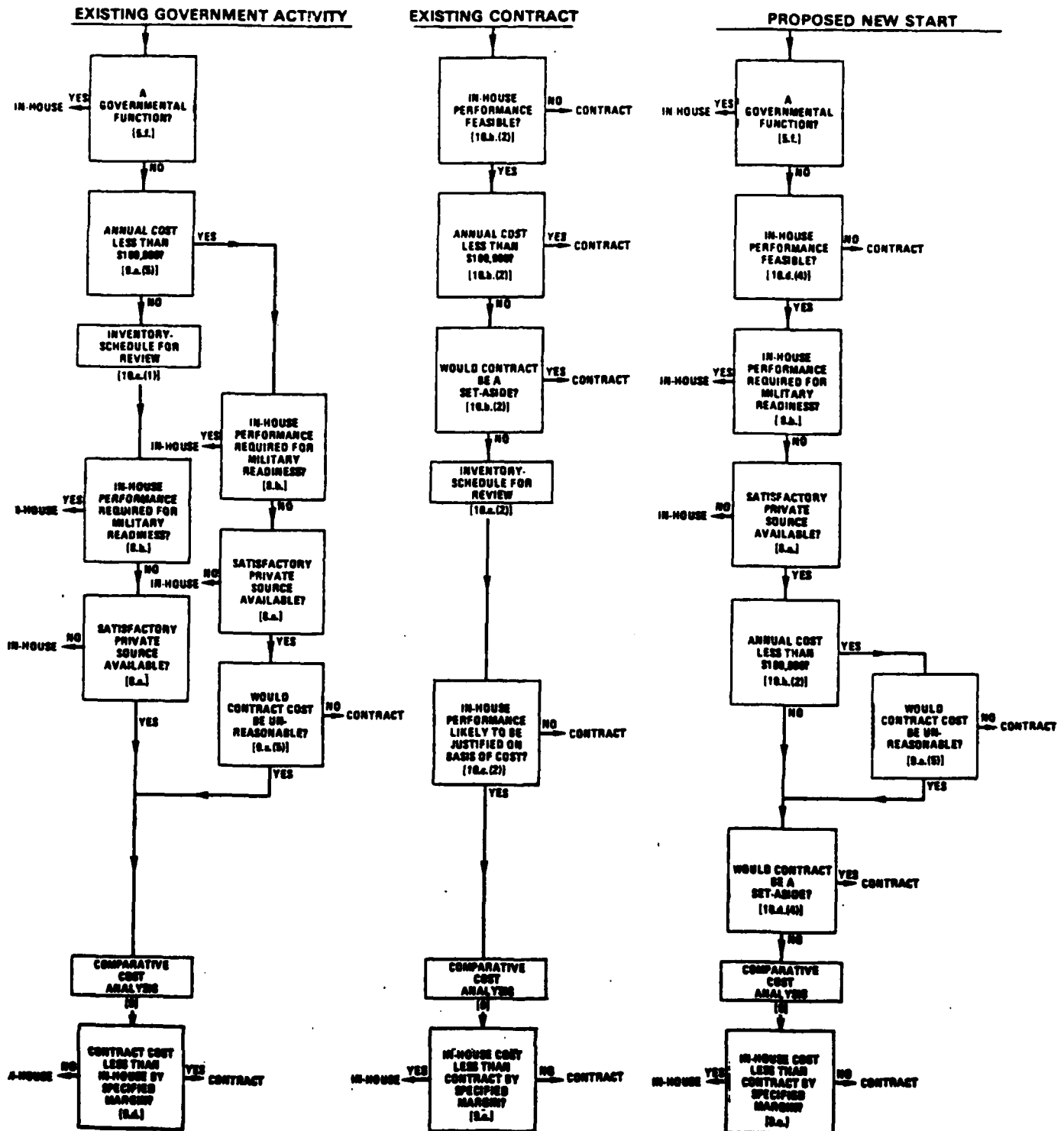
Food Services

Operation of cafeterias, mess halls, kitchens, bakeries, dairies,
and commissaries
Vending machines
Ice and water

Other Services

Laundry and dry cleaning
Library operation
Mapping and charting
Architect and engineer services
Geological surveys
Cataloging
Training -- academic, technical, vocational, and specialized (within the
limitations of P.L. 85-507, unless waived by the Office of Personnel
Management)
Operation of utility systems (power, gas, water, steam, and sewage)

IMPLEMENTATION OF OMB CIRCULAR A-76



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